

CITY AND COUNTY OF SAN FRANCISCO



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City Attorney

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August 29, 2023

VIA ECF

Molly C. Dwyer
Clerk of Court
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: *Coalition on Homelessness, et al. v. City and County of San Francisco, et al.*
United States Court of Appeals for the Ninth Circuit, Case No. 23-15087

Dear Ms. Dwyer:

Appellant and Defendant City and County of San Francisco (“San Francisco”) submits the following requested supplemental notice to the United States Court of Appeals for the Ninth Circuit regarding San Francisco’s Motion to Modify the Preliminary Injunction Order Pending Appeal (“Motion”).

During the oral argument, counsel for Appellees and Plaintiffs the Coalition on Homelessness (“Coalition”) made certain concessions about who qualifies as “involuntarily homeless” and the scope of the preliminary injunction. For example, the Coalition’s counsel:

- Agreed with Judge Desai that “the city can still enforce the enjoined laws against individuals who refuse an offer of actual available shelter” and stated, “If an individual is no longer involuntarily homeless because they have access to practically available shelter, then – again, consistent with *Martin* and *Grants Pass* – that individual . . . is no longer involuntarily homeless and, therefore, is subject – is outside the scope of the injunction”;
- Stated that when a person receives an offer of “practically available shelter, then they are no longer involuntarily homeless,” and agreed with Judge Koh that “it doesn’t matter that [the offer] was in the context of an enforcement action”;
- Agreed with Judge Koh that “the actual scope of the injunction only relates to involuntary homelessness without any connection to the formula”; and
- Agreed with Judge Bumatay and stated that “the Eighth Amendment and *Martin* and *Grants Pass* doesn’t dictate to any city how they should manage their shelter system.”

The Court asked whether, in light of those concessions, the parties could reach stipulations in the district court to alleviate the need for the Ninth Circuit to stay or modify the injunction pending appeal. The Court invited San Francisco to file a supplemental notice

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OFFICE OF THE CITY ATTORNEY

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informing the Court whether the parties had reached a stipulation on the Coalition's concessions and whether San Francisco still needs a ruling on its Motion.

San Francisco attempted to reach such a stipulation with counsel for the Coalition. After obtaining and reviewing a transcript of the August 23, 2023 oral argument, San Francisco proposed the parties stipulate to five points based on Coalition's statements during the August 23, 2023 oral argument and the cases cited in Coalition's response:

- A person is not "involuntarily homeless," for purposes of the Preliminary Injunction, if that person has refused an offer of available shelter, whether made during or outside of an encampment resolution, or otherwise has access to such shelter or the means to obtain it;
- Defendants may enforce and threaten to enforce all laws, including the laws enjoined in the Preliminary Injunction, against individuals who are not involuntarily homeless for purposes of the Preliminary Injunction;
- The scope of the Preliminary Injunction only relates to involuntary homelessness without any connection to the formula, or ratio, of the number of people experiencing homelessness compared to the number of available shelter beds;
- Neither the Eighth Amendment, nor the Preliminary Injunction, dictates how the City manages its shelters and housing system; and
- The presence of a police officer or officers during an interaction with a person experiencing homelessness, without a written or verbal threat to enforce the enjoined laws, is insufficient to establish a violation of either the Preliminary Injunction or Eighth Amendment.

San Francisco proposed that the parties file the contemplated stipulation with the district court and agreed to withdraw its Motion currently before this Court if the district court signed a proposed order adopting the stipulation. Counsel for the Coalition refused to stipulate, deleting the two proposed stipulations regarding the definition of threat and the inability to dictate how the City manages its shelters, and proposing modified language as to the remaining three proposed stipulations that departed substantially from their concessions and that is unsupported by the caselaw. Attached as Exhibit A to the enclosed declaration of John George is a true and correct copy of the email correspondence among counsel for the parties on this issue following the August 23, 2023 oral argument.

On August 24, 2023, one day after the oral argument on San Francisco's appeal of the preliminary injunction order, the parties had a hearing before the district court regarding the Coalition's motion to enforce the preliminary injunction. At the hearing, the district court denied Plaintiffs' motion to enforce as to Plaintiffs' Eighth Amendment claims without prejudice to Plaintiffs refiling a similar motion, and requested supplemental briefing to be filed on September 22, 2023, concerning Plaintiffs' Fourth Amendment claims. In light of Plaintiffs' refusal to stipulate to its concessions during oral argument and the continuing threats of enforcement of the injunction, San Francisco respectfully requests that the Court rule on its Motion as filed, in addition to the Appeal seeking to vacate the Preliminary Injunction.

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OFFICE OF THE CITY ATTORNEY

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Very truly yours,

DAVID CHIU
City Attorney

s/Wayne Snodgrass

Wayne Snodgrass
Deputy City Attorney

Enclosure As Stated

**DECLARATION OF JOHN HAMILTON GEORGE IN SUPPORT OF
MOTION TO STAY**

I, JOHN HAMILTON GEORGE, declare as follows:

1. I am an attorney at law duly licensed to practice law in the State of California. I am a Deputy City Attorney at the San Francisco City Attorney's Office, attorneys of record for the Appellant and Defendant City and County of San Francisco ("San Francisco"). I am familiar with the facts herein. The following is within my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. Attached as **Exhibit A** to this Declaration is a true and correct copy of my correspondence with counsel for the Coalition regarding the proposed stipulations.

3. Attached as **Exhibit B** to this Declaration is a true and correct copy of the proposed stipulation I sent counsel for the Coalition on August 25, 2023.

4. Attached as **Exhibit C** to this Declaration is a true and correct copy the Coalition's edits to the proposed stipulation I sent counsel for on August 25, 2023.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 29th day of August, 2023, at San Francisco, California.

s/John Hamilton George

John Hamilton George

EXHIBIT A
TO
DECLARATION OF JOHN HAMILTON GEORGE

From: [George, John \(CAT\)](#)
To: ["Joseph.Lee@lw.com"](#); [Wesley.Tiu@lw.com](#); [zshroff@lccrsf.org](#); [Al.Pfeiffer@lw.com](#); [wfreeman@aclunc.org](#); [SF.PROBONO.UNHOUSED.PERSONS.LITIGATION@lw.com](#); [jdo@aclunc.org](#)
Cc: [Murphy, Kaitlyn \(CAT\)](#); [Snodgrass, Wayne \(CAT\)](#); [Wang, Edmund \(CAT\)](#); [Ikels, Zuzana \(CAT\)](#); [Gradilla, Miguel \(CAT\)](#); [Mere, Yvonne \(CAT\)](#); [Garcia, Sophia \(CAT\)](#); [Andrew, Rhonda \(CAT\)](#); [Fong, Winnie \(CAT\)](#)
Subject: RE: Coalition v. San Francisco - Proposed Stipulation to Modify the PI Consistent With Statements to 9th Cir.
Date: Tuesday, August 29, 2023 8:25:35 AM

Dear Joe,

We are unfortunately at an impasse. Defendants motion to modify the injunction seeks to stay the injunction and permit the City to abide by its pre-enforcement police bulletin, which Plaintiffs told Judge Bumatay they “agree with the general principle behind.” The requested relief cannot be satisfied by a limited agreement on the definition of involuntary homelessness, especially the insufficient definition included in Plaintiffs’ proposal, and we disagree that the panel limited our ability to agree to a stipulation by suggesting certain areas of agreement. Each judge identified several key areas of consensus, which we compiled into a single stipulation.

Defendants do not agree to Plaintiffs’ proposed stipulation, which refuses to provide any language defining threats consistent with the very cases Plaintiffs submitted and walks away from Plaintiffs’ representations that the Eight Amendment, Martin, and Grants Pass do not dictate how the City operates its shelters and that the formula does not have any connection to the scope of the injunction. Plaintiffs’ changes, including the incomplete quote from Martin, also disregard that access to shelter comes from sources other than the City (such as the means to pay for it) and add legally-unsupported modifications, including that offers be “specific” and requiring Defendants to demonstrate that specific offers have been made.

It is disappointing that Plaintiffs are unwilling to stipulate to their statements to the 9th Circuit about who is not involuntarily homeless and the scope of the preliminary injunction, as well as a definition of threat that is consistent with the caselaw Plaintiffs submitted to the Court regarding other injunctions prohibiting threats (*Kohr v. City of Houston* prohibited “written or verbal threats to cite or arrest” and *Justin v. Los Angeles* prohibited, in inherently verbal exchanges, “[d]emanding production of identification on threat of arrest, and arresting individuals if no identification is produced”).

Thanks,
John

John H. George
Deputy City Attorney
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From: Joseph.Lee@lw.com <Joseph.Lee@lw.com>
Sent: Friday, August 25, 2023 1:40 PM
To: George, John (CAT) <John.George@sfcityatty.org>; Wesley.Tiu@lw.com; zshroff@lccrsf.org; Al.Pfeiffer@lw.com; wfreeman@aclunc.org; SF.PROBONO.UNHOUSED.PERSONS.LITIGATION@lw.com; jdo@aclunc.org
Cc: Murphy, Kaitlyn (CAT) <Kaitlyn.Murphy@sfcityatty.org>; Snodgrass, Wayne (CAT) <Wayne.Snodgrass@sfcityatty.org>; Wang, Edmund (CAT) <Edmund.Wang@sfcityatty.org>; Ikels, Zuzana (CAT) <Zuzana.Ikels@sfcityatty.org>; Gradilla, Miguel (CAT) <Miguel.Gradilla@sfcityatty.org>; Mere, Yvonne (CAT) <Yvonne.Mere@sfcityatty.org>; Garcia, Sophia (CAT) <Sophia.Garcia@sfcityatty.org>; Andrew, Rhonda (CAT) <Rhonda.Andrew@sfcityatty.org>; Fong, Winnie (CAT) <Winnie.Fong@sfcityatty.org>
Subject: RE: Coalition v. San Francisco - Proposed Stipulation to Modify the PI Consistent With Statements to 9th Cir.

John,

Thanks for your message and your proposed draft. We agree that it will be helpful to stipulate to the issue surrounding the definition of “involuntarily homeless,” which is what the judges on the panel were asking us to consider. Accordingly, we have edited the proposed stipulation to address that issue. We also made some additional edits to clarify the context in which the stipulation is being made and the nature of the stipulation to avoid the previously raised jurisdictional issues. The other issues set forth in Defendants’ proposed stipulation, however, were not agreed to by the parties, and were not the issues that that panel was suggesting we cover. We therefore cannot agree to them.

We look forward to getting the modified stipulation on file and to Defendants promptly withdrawing its motion for modification. We also remain open to further discussion if it would be helpful. Thank you.

Joe

From: George, John (CAT) <John.George@sfcityatty.org>
Sent: Friday, August 25, 2023 9:11 AM
To: Lee, Joseph (OC) <Joseph.Lee@lw.com>; Tiu, Wesley (Bay Area) <Wesley.Tiu@lw.com>; zshroff@lccrsf.org; Pfeiffer, Al (Bay Area) <Al.Pfeiffer@lw.com>; wfreeman@aclunc.org; #SF PRO BONO - UNHOUSED PERSONS LITIGATION <SF.PROBONO.UNHOUSED.PERSONS.LITIGATION@lw.com>; jdo@aclunc.org
Cc: Murphy, Kaitlyn (CAT) <Kaitlyn.Murphy@sfcityatty.org>; Snodgrass, Wayne (CAT) <Wayne.Snodgrass@sfcityatty.org>; Wang, Edmund (CAT) <Edmund.Wang@sfcityatty.org>; Ikels, Zuzana (CAT) <Zuzana.Ikels@sfcityatty.org>; Gradilla, Miguel (CAT) <Miguel.Gradilla@sfcityatty.org>; Mere, Yvonne (CAT) <Yvonne.Mere@sfcityatty.org>; Garcia, Sophia (CAT) <Sophia.Garcia@sfcityatty.org>; Andrew, Rhonda (CAT) <Rhonda.Andrew@sfcityatty.org>; Fong, Winnie (CAT) <Winnie.Fong@sfcityatty.org>
Subject: RE: Coalition v. San Francisco - Proposed Stipulation to Modify the PI Consistent With

Statements to 9th Cir.

Dear Joe,

I inadvertently attached the wrong stipulation to my email last night. Attached is the correct stipulation. This version includes an additional paragraph: "The scope of the Preliminary Injunction only relates to involuntary homelessness without any connection to the formula, or ratio, of the number of people experiencing homelessness compared to the number of available shelter beds." This is consistent with your exchange with Judge Koh: "Judge Koh: And what you're saying, and I think that's what the city is also wanting us to hold, is that the actual scope of the injunction only relates to involuntary homelessness without any connection to the formula; Joseph Lee: That's correct."

The remainder of my email accurately conveys Defendants' position. Apologies for the error.

Thanks,

John

John H. George

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From: George, John (CAT)

Sent: Thursday, August 24, 2023 6:55 PM

To: 'Joseph.Lee@lw.com' <Joseph.Lee@lw.com>; Wesley.Tiu@lw.com; zshroff@lccrsf.org; Al.Pfeiffer@lw.com; wfreeman@aclunc.org; SF.PROBONO.UNHOUSED.PERSONS.LITIGATION@lw.com; jdo@aclunc.org

Cc: Murphy, Kaitlyn (CAT) <Kaitlyn.Murphy@sfcityatty.org>; Snodgrass, Wayne (CAT) <Wayne.Snodgrass@sfcityatty.org>; Wang, Edmund (CAT) <Edmund.Wang@sfcityatty.org>; Ikels, Zuzana (CAT) <Zuzana.Ikels@sfcityatty.org>; Gradilla, Miguel (CAT) <Miguel.Gradilla@sfcityatty.org>; Mere, Yvonne (CAT) <Yvonne.Mere@sfcityatty.org>; Garcia, Sophia (CAT) <Sophia.Garcia@sfcityatty.org>; Andrew, Rhonda (CAT) <Rhonda.Andrew@sfcityatty.org>; Fong, Winnie (CAT) <Winnie.Fong@sfcityatty.org>

Subject: RE: Coalition v. San Francisco - Proposed Stipulation to Modify the PI Consistent With Statements to 9th Cir.

Dear Joe,

During the hearing Judges Koh and Bumatay each encouraged the parties to try to reach a stipulation based on our apparent agreement regarding interpretation of the preliminary injunction that would resolve Defendants' pending motion to modify the injunction (Judge

Koh: “what if you reached a stipulation because it sounds like your opposing counsel is in agreement that someone who is offered a practically available shelter bed is not -- and declines it is not involuntarily homeless”; Judge Bumatay: “we would . . . rather the district court deal with it than us have to deal with that motion, so maybe after tomorrow's hearing, you could file a supplemental notice of what's happened and whether or not we still need to rule on that motion to modify the injunction pending appeal”). As Wayne stated in response to Judge Koh, “if there were such a stipulation, it would have to be accepted by the district court and, in effect, adopted as . . . a modification or clarification of the injunction much like what we sought back in January.”

For the parties’ agreed positions to have legal effect and resolve the pending motion to modify the injunction, the best path, as Judge Bumatay and Wayne noted, is for the District Court to issue an order adopting the parties’ agreement regarding interpretation of the Preliminary Injunction. We note your position that the District Court cannot modify the injunction pending appeal, but we see no barrier to the District Court entering an order that construes the Preliminary Injunction consistent with the parties’ agreement. Accordingly, Defendants are willing to withdraw their motion to modify the preliminary injunction pending before the 9th Circuit if and when (1) Plaintiffs agree to the attached stipulation, and (2) the District Court enters an order reflecting the text of the parties’ agreed interpretation (the numbered paragraphs). Defendants are attempting to resolve the motion to modify the injunction with this proposed stipulation. To be clear, this proposal would not resolve Defendants’ merits appeal, just the motion to modify the preliminary injunction.

If Plaintiffs insist that the parties file a stipulation in the 9th Circuit due to the limitations on the District Court’s power, Defendants will agree to file the substance of the attached stipulation in the 9th Circuit, but will not withdraw the motion to modify the injunction.

Please let us know Plaintiffs’ position by 2pm on Friday, August 25 so we may timely inform the 9th Circuit.

Thank you,
John

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From: Joseph.Lee@lw.com <Joseph.Lee@lw.com>

Sent: Thursday, August 24, 2023 12:25 PM

To: George, John (CAT) <John.George@sfcityatty.org>; Wesley.Tiu@lw.com; zshroff@lccrsf.org; Al.Pfeiffer@lw.com; wfreeman@aclunc.org; SF.PROBONO.UNHOUSED.PERSONS.LITIGATION@lw.com; jdo@aclunc.org

Cc: Murphy, Kaitlyn (CAT) <Kaitlyn.Murphy@sfcityatty.org>; Snodgrass, Wayne (CAT) <Wayne.Snodgrass@sfcityatty.org>; Wang, Edmund (CAT) <Edmund.Wang@sfcityatty.org>; Ikels, Zuzana (CAT) <Zuzana.Ikels@sfcityatty.org>; Gradilla, Miguel (CAT) <Miguel.Gradilla@sfcityatty.org>; Mere, Yvonne (CAT) <Yvonne.Mere@sfcityatty.org>; Garcia, Sophia (CAT) <Sophia.Garcia@sfcityatty.org>; Andrew, Rhonda (CAT) <Rhonda.Andrew@sfcityatty.org>; Fong, Winnie (CAT) <Winnie.Fong@sfcityatty.org>

Subject: RE: Coalition v. San Francisco - Proposed Stipulation to Modify the PI Consistent With Statements to 9th Cir.

Dear John and Zuzana,

I write in response to both of your emails. I note at the outset that there appears to be some confusion or disagreement on the part of Defendants, as Zuzana's email asserts that any stipulation would be filed with the Ninth Circuit, yet the draft John sent is drafted to be submitted to the District Court. As I mentioned previously (and as Zuzana at least seemed to agree with), no modification of the injunction is available in the district court as a matter of law while the Ninth Circuit retains jurisdiction of the appeal, and so the draft stipulation and proposed order John sent could not be entered by the District Court.

Separately, I agree with Zuzana that misleading representations undermine trust (which is exactly why we appreciate that Defendants edited their motion for a continuance before filing to clear up its description of what Judge Koh asked). So we want to make sure that the parties have the same understanding, which is that the Ninth Circuit raised any potential stipulation in the context of obviating a ruling on Defendants' motion to modify; John's email does not seem to acknowledge that important context. Argument Video at 59:20-59:49. I understand from John's email that Defendants will not withdraw their motion for modification, let alone the appeal, even if the proposed stipulation John sent is agreed to. If so, it is not clear to me what the stipulation is intended to achieve, and it appears that Defendants are not offering the proposed stipulation in an effort to actually resolve Defendants' motion to modify without need for the Ninth Circuit to rule on it. Plaintiffs are, consistent with the Ninth Circuit's statements, interested in considering any proposal from the City that would resolve the motion to modify, but it does not appear that Defendants have made any such proposal.

Regarding the proposed stipulation itself, is it Defendants' position that the stipulation will fully address the alleged irreparable harms raised in Defendants' motion to modify? And does the proposed stipulation address Defendants' arguments on the merits of the appeal regarding alleged vagueness or "workability?" If not, then again, what is the purpose of the stipulation? If it's just to memorialize any statements made during oral arguments, then that seems unnecessary. The statements have already been made, and the parties are free to point out any alleged inconsistencies without the need for a stipulation whenever appropriate.

The proposed stipulation also goes well beyond the bounds of what the Ninth Circuit contemplated.

In particular, the Court asked specifically about a potential stipulation regarding the “agreement that someone who has [been] offered a practically available shelter bed is not, and the client is not involuntarily homeless.” Argument Video at 59:02-59:19. The Court did not describe a stipulation that would constitute a litany of all alleged “concessions” made during oral arguments—Defendants’ view of which seems to include a number of “concessions” not made by Plaintiffs. And with respect to the sole issue the Court raised in the context of a stipulation—the definition of an “involuntarily homeless individual”—Plaintiffs’ position is that the term as used in the preliminary injunction is and always has been understood to be consistent with the term as used in caselaw cited by the District Court, including *Martin* and *Johnson*, and so no stipulation modifying the injunction is needed. But again, if it will resolve Defendants’ motion to modify, we are willing to consider such a stipulation as described by the Ninth Circuit to allay your concerns.

In addition, Plaintiffs disagree that Defendants’ proposed stipulation accurately reflects the statements made by Plaintiffs’ counsel during oral arguments. For example, the stipulation states that the “presence of a police officer or officers during an interaction with a person experiencing homeless[sic], without a written or verbal threat to enforce the enjoined laws, is insufficient to establish a violation of either the Preliminary Injunction or Eighth Amendment.” Not only did I not say this, I said the opposite: “whether or not mere police presence might be enough or might not be enough [to constitute a threat] that again depends on the facts.” Argument Video at 46:24-46:30. I also said “I don’t think there is a bright line rule that [there] has to be a written or verbal threat.” Argument Video at 45:55-46:00. At a minimum, to the extent Defendants are representing that the “language in the stipulation mirrors Plaintiffs’ statements to the court,” please provide specific cites to such statements so that Plaintiffs can consider them.

Joe

Joseph H. Lee

LATHAM & WATKINS LLP

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From: George, John (CAT) <John.George@sfcityatty.org>

Sent: Wednesday, August 23, 2023 5:48 PM

To: Tiu, Wesley (Bay Area) <Wesley.Tiu@lw.com>; 'zshroff@lccrsf.org' <zshroff@lccrsf.org>; Pfeiffer, Al (Bay Area) <Al.Pfeiffer@lw.com>; Lee, Joseph (OC) <Joseph.Lee@lw.com>; 'wfreeman@aclunc.org' <wfreeman@aclunc.org>; #SF PRO BONO - UNHOUSED PERSONS LITIGATION <SF.PROBONO.UNHOUSED.PERSONS.LITIGATION@lw.com>; 'jdo@aclunc.org' <jdo@aclunc.org>

Cc: Murphy, Kaitlyn (CAT) <Kaitlyn.Murphy@sfcityatty.org>; Snodgrass, Wayne (CAT) <Wayne.Snodgrass@sfcityatty.org>; Wang, Edmund (CAT) <Edmund.Wang@sfcityatty.org>; Ikels, Zuzana (CAT) <Zuzana.Ikels@sfcityatty.org>; Gradilla, Miguel (CAT) <Miguel.Gradilla@sfcityatty.org>; Mere, Yvonne (CAT) <Yvonne.Mere@sfcityatty.org>; Garcia, Sophia (CAT) <Sophia.Garcia@sfcityatty.org>; Andrew, Rhonda (CAT) <Rhonda.Andrew@sfcityatty.org>; Fong,

Winnie (CAT) <Winnie.Fong@sfcityatty.org>

Subject: Coalition v. San Francisco - Proposed Stipulation to Modify the PI Consistent With Statements to 9th Cir.

Dear Counsel:

In light of the 9th Circuit judges' direction to the parties at this morning's hearing that the parties try to stipulate to clarify the Preliminary Injunction consistent with Plaintiffs' representations, attached is a draft stipulation. The language in the stipulation mirrors Plaintiffs' statements to the court this morning. We disagree that Plaintiffs made no concessions at the hearing (as Joe stated in his earlier email), but regardless of what the statements were, they were made in court to a panel of judges with all the attendant responsibilities and obligations regarding candor and truthfulness. Agreeing to stipulate to clarify the injunction consistent with Plaintiffs' counsel's statements at the hearing should therefore be uncontroversial. Pursuant with the court's instructions, we intend to report back to the court regarding the result of our efforts to stipulate.

Defendants maintain that the preliminary injunction should be vacated and do not, by this stipulation or otherwise, agree to withdraw their appeal, but agreement to this stipulation (and the District Court's order pursuant to it) may, as Judges Koh and Bumatay pointed out, narrow the scope of the pending Motion to Modify the Preliminary Injunction Order Pending Appeal.

All the best,
John

John H. George
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Privacy Standards available at www.lw.com.

EXHIBIT B
TO
DECLARATION OF JOHN HAMILTON GEORGE

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 City Attorney
 2 YVONNE R. MERÉ, State Bar #173594
 Chief Deputy City Attorney
 3 WAYNE SNODGRASS, State Bar #148137
 Deputy City Attorney
 4 EDMUND T. WANG, State Bar #278755
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 5 MIGUEL A. GRADILLA, State Bar #304125
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 14 john.george@sfcityatty.org
 zuzana.ikels@sfcityatty.org

15 Attorneys for Defendants
 16 CITY AND COUNTY OF SAN FRANCISCO, et al.

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

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

23 Plaintiffs,

24 vs.

25 CITY AND COUNTY OF SAN
 FRANCISCO, et al.,

26 Defendants.

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

**STIPULATION AND [PROPOSED] ORDER
 CONSTRUING THE PRELIMINARY
 INJUNCTION**

Trial Date: April 15, 2024

1 WHEREAS, on December 23, 2022, the Court issued its Order on Motion for Preliminary
2 Injunction (ECF No. 65);

3 WHEREAS, Defendants appealed the Order on Motion for Preliminary Injunction and the
4 Court of Appeals for the Ninth Circuit held a hearing on Defendants' appeal and Motion to Modify the
5 Preliminary Injunction Order Pending Appeal on August 23, 2023; and

6 WHEREAS, based on representations made by counsel to the Ninth Circuit panel during the
7 August 23, 2023 argument, certain judges on the panel encouraged the parties to stipulate to their
8 understanding of the injunction to reflect the parties' apparent agreement regarding the Preliminary
9 Injunction.

10 THEREFORE, the parties stipulate to the following:

11 1. A person is not "involuntarily homeless," for purposes of the Preliminary Injunction, if
12 that person has refused an offer of available shelter, whether made during or outside of an
13 encampment resolution, or otherwise has access to such shelter or the means to obtain it;

14 2. Defendants may enforce and threaten to enforce all laws, including the laws enjoined in
15 the Preliminary Injunction, against individuals who are not involuntarily homeless for purposes of the
16 Preliminary Injunction;

17 3. The scope of the Preliminary Injunction only relates to involuntary homelessness
18 without any connection to the formula, or ratio, of the number of people experiencing homelessness
19 compared to the number of available shelter beds;

20 4. Neither the Eighth Amendment, nor the Preliminary Injunction, dictate how the City
21 manages its shelter and housing system; and

22 5. The presence of a police officer or officers during an interaction with a person
23 experiencing homeless, without a written or verbal threat to enforce the enjoined laws, is insufficient
24 to establish a violation of either the Preliminary Injunction or Eighth Amendment.

1 Dated: August __, 2023

2 DAVID CHIU
3 City Attorney
4 YVONNE R. MERÉ
5 WAYNE SNODGRASS
6 EDMUND T. WANG
7 KAITLYN MURPHY
8 MIGUEL A. GRADILLA
9 JOHN H. GEORGE
10 ZUZANA S. IKELS
11 Deputy City Attorneys

12 By: _____
13 JOHN H. GEORGE

14 Attorneys for Defendants
15 CITY AND COUNTY OF SAN FRANCISCO; SAN
16 FRANCISCO POLICE DEPARTMENT; SAN
17 FRANCISCO DEPARTMENT OF PUBLIC WORKS;
18 SAN FRANCISCO DEPARTMENT OF
19 HOMELESSNESS AND SUPPORTIVE HOUSING;
20 SAN FRANCISCO FIRE DEPARTMENT; SAN
21 FRANCISCO DEPARTMENT OF EMERGENCY
22 MANAGEMENT

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Dated: August __, 2023

ALFRED C. PFEIFFER, JR.
WESLEY TIU
JOSEPH H. LEE
KEVIN WU
TULIN GURER
RACHEL MITCHELL
Latham & Watkins LLP

By: _____
JOSEPH H. LEE

ZAL K. SHROFF
Lawyers' Committee for Civil Rights of the San
Francisco Bay Area

JOHN THOMAS H. DO
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ACLU Foundation of Northern California

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COALITION ON HOMELESSNESS; TORO
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MOLIQUE FRANK; DAVID MARTINEZ; TERESA
SANDOVAL; NATHANIEL VAUGHN

CIVIL L.R. 5-1(h)(3) ATTESTATION

I, John H. George, attest that each of the other signatories have concurred in the filing of this document, which shall serve in lieu of their own signatures on the document.

Dated: August __, 2023

DAVID CHIU
City Attorney
YVONNE R. MERÉ
WAYNE SNODGRASS
MEREDITH B. OSBORN
EDMUND T. WANG
KAITLYN MURPHY
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Deputy City Attorneys

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FRANCISCO POLICE DEPARTMENT; SAN
FRANCISCO DEPARTMENT OF PUBLIC WORKS;
SAN FRANCISCO DEPARTMENT OF
HOMELESSNESS AND SUPPORTIVE HOUSING;
SAN FRANCISCO FIRE DEPARTMENT; SAN
FRANCISCO DEPARTMENT OF EMERGENCY
MANAGEMENT

[PROPOSED] ORDER

Pursuant to the stipulation of the parties and for good cause shown, the Court orders the following regarding the construction of the Order on Motion for Preliminary Injunction (ECF No. 65):

1. A person is not “involuntarily homeless,” for purposes of the Preliminary Injunction, if that person has refused an offer of available shelter, whether made during or outside of an encampment resolution, or otherwise has access to such shelter or the means to obtain it;

2. Defendants may enforce and threaten to enforce all laws, including the laws enjoined in the Preliminary Injunction, against individuals who are not involuntarily homeless for purposes of the Preliminary Injunction;

3. The scope of the Preliminary Injunction only relates to involuntary homelessness without any connection to the formula, or ratio, of the number of people experiencing homelessness compared to the number of available shelter beds;

4. Neither the Eighth Amendment, nor the Preliminary Injunction, dictate how the City manages its shelter and housing system; and

5. The presence of a police officer or officers during an interaction with a person experiencing homeless, without a written or verbal threat to enforce the enjoined laws, is insufficient to establish a violation of either the Preliminary Injunction or Eighth Amendment.

IT IS SO ORDERED.

Dated: _____

HONORABLE DONNA M. RYU
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C
TO
DECLARATION OF JOHN HAMILTON GEORGE

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 2 YVONNE R. MERÉ, State Bar #173594
 Chief Deputy City Attorney
 3 WAYNE SNODGRASS, State Bar #148137
 Deputy City Attorney
 4 EDMUND T. WANG, State Bar #278755
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 5 MIGUEL A. GRADILLA, State Bar #304125
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Additional Counsel Appear on Signature Page

18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA

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

24 Plaintiffs,

25 vs.

26 CITY AND COUNTY OF SAN
 27 FRANCISCO, et al.,

28 Defendants.

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

STIPULATION AND [PROPOSED] ORDER
CONSTRUING REGARDING THE PARTIES'
UNDERSTANDING OF THE PRELIMINARY
INJUNCTION

Trial Date: April 15, 2024

1 WHEREAS, on December 23, 2022, the Court issued its Order on Motion for Preliminary
2 Injunction (ECF No. 65);

3 WHEREAS, Defendants appealed the Order on Motion for Preliminary Injunction and filed a
4 Motion to Modify the Preliminary Injunction Open Pending Appeal (“Motion to Modify”) in the Court
5 of Appeals for the Ninth Circuit;

6 WHEREAS the Ninth Circuit held a hearing on Defendants’ appeal and Motion to Modify ~~the~~
7 Preliminary Injunction Order Pending Appeal on August 23, 2023; ~~and~~

8 WHEREAS, based on representations made by counsel for both parties to the Ninth Circuit
9 panel during the August 23, 2023 argument, certain judges on the panel ~~encouraged-suggested~~ the
10 parties ~~could~~ obviate the need for the Ninth Circuit to rule on Defendants’ Motion to Modify by
11 stipulating to their common understanding of the term “involuntarily homeless individuals” in the
12 preliminary injunction to reflect the parties’ apparent agreement regarding the Preliminary Injunction;

13 WHEREAS, as a condition of this stipulation, Defendants have agreed to withdraw their
14 Motion to Modify; and

15 WHEREAS, the parties agree that this stipulation does not modify the preliminary injunction,
16 and therefore this Court retains jurisdiction to enter it.

17 THEREFORE, the parties stipulate to the following:

18 1. ~~A person is not~~ The term “involuntarily homeless individual;” as used in ~~for purposes of~~
19 the Preliminary Injunction has the same meaning as that set forth in *Martin v. City of Boise* and *John v.*
20 *City of Grants Pass*. See, e.g., *Martin*, 920 F.3d 584 (9th Cir. 2019); *Johnson v. City of Grants Pass*,
21 72 F.4th 868 (9th Cir. 2023). An individual is considered to be involuntarily homeless “if they do not
22 have access to adequate temporary shelter” because it is not “realistically available to them.” *Johnson*
23 *v. City of Grants Pass*, 72 F.4th 868, 875 n. 2 (9th Cir. 2023), if that person has refused an offer of
24 available shelter, whether made during or outside of an encampment resolution, or otherwise has
25 access to such shelter or the means to obtain it;

26 2. Even if there are more homeless individuals in San Francisco than there are shelter beds
27 available, Defendants may enforce and threaten to enforce the codes enjoined from enforcement in the
28 Preliminary Injunction against a specific individual if Defendants can demonstrate that the individual

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1 ~~against whom enforcement or threat of enforcement is made has a specific offer of realistically~~
2 ~~available shelter but chooses not to use it. *Martin*, 920 F.3d at 617 n.8 (quoted by ECF 65 at 36)all~~
3 ~~laws, including the laws enjoined in the Preliminary Injunction, against individuals who are not~~
4 ~~involuntarily homeless for purposes of the Preliminary Injunction;~~

5 3. ~~Defendants can make a specific offer of realistically available shelter to an individual at~~
6 ~~any time, including within the context of an encampment resolution, but no enforcement or threat of~~
7 ~~enforcement of the codes enumerated in the Preliminary Injunction can be carried out against that~~
8 ~~individual unless the conditions set forth in paragraph 2 are metThe scope of the Preliminary~~
9 ~~Injunction only relates to involuntary homelessness without any connection to the formula, or ratio, of~~
10 ~~the number of people experiencing homelessness compared to the number of available shelter beds;~~

11 4. ~~Neither the Eighth Amendment, nor the Preliminary Injunction, dictate how the City~~
12 ~~manages its shelter and housing system; and~~

13 5. ~~The presence of a police officer or officers during an interaction with a person~~
14 ~~experiencing homeless, without a written or verbal threat to enforce the enjoined laws, is insufficient~~
15 ~~to establish a violation of either the Preliminary Injunction or Eighth Amendment.~~

1 Dated: August __, 2023

2 DAVID CHIU
3 City Attorney
4 YVONNE R. MERÉ
5 WAYNE SNODGRASS
6 EDMUND T. WANG
7 KAITLYN MURPHY
8 MIGUEL A. GRADILLA
9 JOHN H. GEORGE
10 ZUZANA S. IKELS
11 Deputy City Attorneys

12 By: _____
13 JOHN H. GEORGE

14 Attorneys for Defendants
15 CITY AND COUNTY OF SAN FRANCISCO; SAN
16 FRANCISCO POLICE DEPARTMENT; SAN
17 FRANCISCO DEPARTMENT OF PUBLIC WORKS;
18 SAN FRANCISCO DEPARTMENT OF
19 HOMELESSNESS AND SUPPORTIVE HOUSING;
20 SAN FRANCISCO FIRE DEPARTMENT; SAN
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22 MANAGEMENT

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Dated: August __, 2023

ALFRED C. PFEIFFER, JR.
WESLEY TIU
JOSEPH H. LEE
KEVIN WU
TULIN GURER
RACHEL MITCHELL
Latham & Watkins LLP

By: _____
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ZAL K. SHROFF
Lawyers' Committee for Civil Rights of the San
Francisco Bay Area

JOHN THOMAS H. DO
BRANDON L. GREENE
ACLU Foundation of Northern California

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CASTAÑO; SARAH CRONK; JOSHUA DONOHOE;
MOLIQUE FRANK; DAVID MARTINEZ; TERESA
SANDOVAL; NATHANIEL VAUGHN

IT IS SO ORDERED.

Dated: _____
HONORABLE DONNA M. RYU
UNITED STATES MAGISTRATE JUDGE

CIVIL L.R. 5-1(h)(3) ATTESTATION

I, John H. George, attest that each of the other signatories have concurred in the filing of this document, which shall serve in lieu of their own signatures on the document.

Dated: August __, 2023

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MANAGEMENT

~~[PROPOSED] ORDER~~

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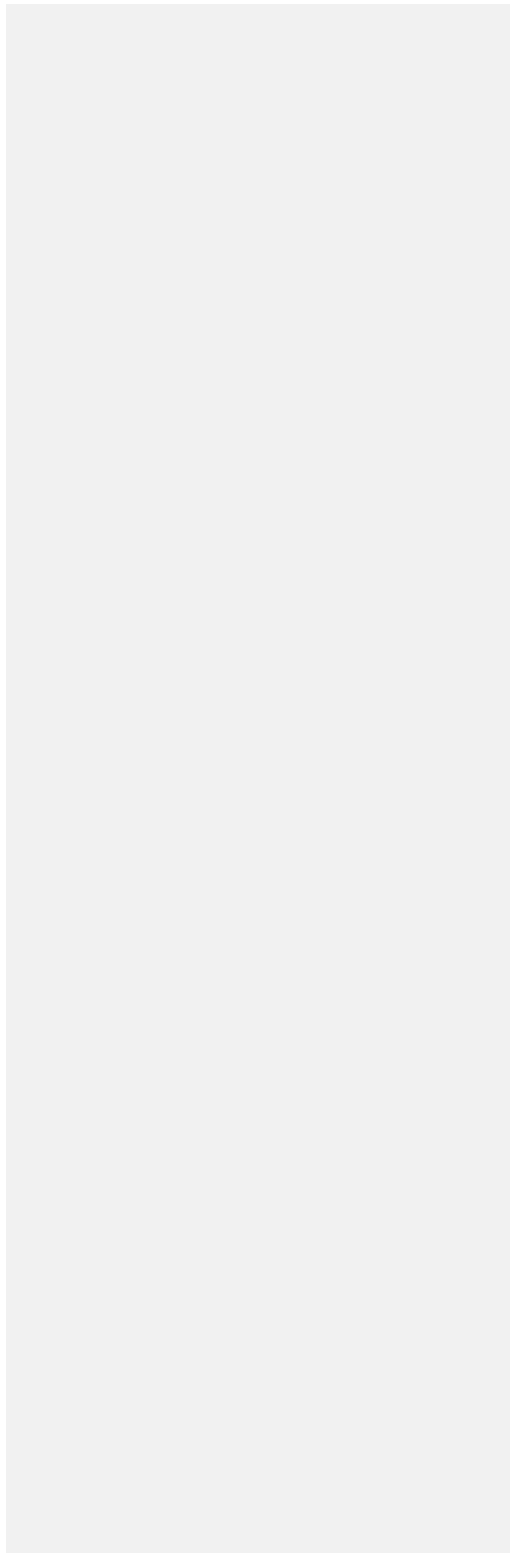
~~4. — Neither the Eighth Amendment, nor the Preliminary Injunction, dictate how the City manages its shelter and housing system; and~~

~~5. — The presence of a police officer or officers during an interaction with a person experiencing homeless, without a written or verbal threat to enforce the enjoined laws, is insufficient to establish a violation of either the Preliminary Injunction or Eighth Amendment.~~

~~IT IS SO ORDERED.~~

~~Dated: _____~~
~~HONORABLE DONNA M. RYU~~
~~UNITED STATES MAGISTRATE JUDGE~~

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CERTIFICATE OF SERVICE

I, Pamela Cheeseborough, hereby certify that I electronically filed the following document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on

Letter Updating Court on Potential Stipulation Re Motion to Modify

Declaration of John Hamilton George

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed August 29, 2023 at San Francisco, California.

s/Pamela Cheeseborough

Pamela Cheeseborough