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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

20 COALITION ON HOMELESSNESS, et al.,
21 Plaintiffs.

22 v.

23 CITY AND COUNTY OF SAN FRANCISCO,
24 et al.,
25 Defendants.

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

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' ADMINISTRATIVE
MOTION FOR EXTENDED BRIEFING
SCHEDULE**

Hon. Judge Donna M. Ryu

Date Action Filed: September 27, 2022

1 **I. INTRODUCTION**

2 Plaintiffs filed this action to enjoin Defendants from summarily destroying the personal
3 property of unhoused residents and from conducting criminal enforcement against unhoused
4 residents who have not been provided sufficient and adequate shelter by the City. Although
5 Plaintiffs also filed a Motion for Preliminary Injunction (“PI Motion”) in light of the extent of
6 Defendants’ unconstitutional conduct, Defendants have continued their unlawful practices even
7 after the PI Motion was filed.

8 Defendants—who abruptly cut off ongoing conversations last week between the parties
9 aimed at achieving an appropriate briefing schedule for the PI Motion—now grouse to this Court
10 that the current briefing schedule conflicts with personal vacations and deadlines in other cases.
11 But Defendants fail to identify any “substantial harm or prejudice” that would justify the *lengthy*
12 extension of time they seek to respond to the PI Motion, during which time Defendants will
13 continue to subject San Francisco’s unhoused population to serious trauma and ongoing
14 constitutional harms on a daily basis. Defendants also partially premise their request on the basis
15 that they need more time to supposedly gather factual information on Plaintiffs’ claims, but have
16 stonewalled Plaintiffs’ repeated attempts to hold a Rule 26(f) conference. For these reasons,
17 Plaintiffs respectfully request that Defendants’ Administrative Motion be denied.

18 **II. RELEVANT BACKGROUND**

19 Although Defendants’ opposition to the PI Motion was initially due October 11, 2022, the
20 Court extended that deadline to October 18, 2022 and set a hearing for November 18, 2022. Dkt.
21 No. 22. The Court did not extend the time for Defendants to respond to the Complaint.¹ On October
22 4, 2022, Defendants’ counsel proposed to extend Defendants’ opposition to the PI Motion by an
23 *additional four weeks*. Dkt. No. 28-1 at 4 (to November 15, 2022). Defendants vaguely asserted
24 that “preexisting commitments” were a basis for the extension without providing further
25 information. *Id.* As part of their extension request, Defendants stated that they might be willing to
26 engage in settlement discussions. *See id.* Because of Plaintiffs’ urgent need for relief, Plaintiffs

27 _____
28 ¹ Plaintiff do not oppose Defendants’ request for an extension to respond to the Complaint.

1 offered to consent to the proposal if Defendants engaged in meaningful settlement talks,
 2 temporarily ceased their ongoing property destruction and criminal enforcement practices during
 3 the extended briefing period, and conducted a prompt Rule 26(f) conference. *Id.*² Defendants
 4 refused these conditions and instead simply offered the sleeves off their vest, stating that they
 5 would “agree to adhere to [their] written policies.” *Id.* at 2. Before even allowing Plaintiffs a
 6 chance to respond with an alternate scheduling proposal, Defendants filed their Administrative
 7 Motion less than a day later. Shroff Decl. ¶¶ 7-8, Ex. A.

8 **III. ARGUMENT**

9 To justify changing a briefing schedule in this District, a party must identify “substantial
 10 harm or prejudice that would occur if the Court did not change the time.” Civil L. R. 6-3(a)(3).
 11 Defendants have not presented the risk of *any* harm or prejudice to Defendants if their motion is
 12 denied—much less the *substantial* harm or prejudice required to support a motion to enlarge time.
 13 Despite Defendants’ arguments to the contrary, the mere desire for more time or conflicts with
 14 personal travel schedules and other court deadlines fail to constitute the required prejudice as a
 15 matter of law. Meanwhile, granting Defendants’ extension request would subject Plaintiffs to
 16 immediate future constitutional deprivations that constitute both substantial and irreparable harm.

17 **A. Purported Need for More Time Is Not “Substantial Harm or Prejudice.”**

18 Defendants apparently contend that because the PI Motion is well-supported, Defendants
 19 will suffer substantial harm if they cannot have more time to respond. But the mere desire for
 20 additional time to respond to a detailed motion—without more—cannot constitute substantial harm
 21 or prejudice. *See Burrell v. County of Santa Clara*, No. 11–CV–04569–LHK, 2013 WL 2156374,
 22 at *1 n. 4 (N.D. Cal. May 17, 2013) (“the volume of work involved” is not a sufficient reason to
 23 extend a briefing schedule); *In re Cisco Sys. Sec. Litig.*, No. C 11-1568 SBA, 2013 1636384, at *1

24 _____
 25 ² This was the third time Plaintiffs’ counsel requested that Defendants provide dates for a 26(f)
 26 conference. Plaintiffs first made this request on September 26, 2022 when courtesy copies of the
 27 Complaint and PI motion were sent to Defendants. Shroff Decl. ¶ 3. A second request to schedule
 28 a 26(f) conference was made on September 28, 2022. *Id.* ¶ 4. Plaintiffs have reminded Defendants
 that the parties are obligated to confer “as soon as practicable.” *See* Fed. R. Civ. P. 26(f); *see also*
Highlander Holdings v. Fellner, No. 3:18-cv-1506-AHG, 2020 WL 3498174, at *6 (S.D. Cal. Jun.
 29, 2020).

1 (N.D. Cal. Apr. 16, 2013) (“need [for] additional time” to prepare a response was not “substantial
2 harm or prejudice”).

3 Defendants argue that they need additional time to “evaluate [the] evidence, gather relevant
4 information and test [the] factual allegations” of the PI Motion, but fail to identify what specific
5 information they purportedly need to prepare their response. Indeed, Defendants ignore that the
6 bulk of the evidence submitted in support of Plaintiffs’ claims comes from Defendants’ own
7 reports, communications, and public statements. *See, e.g.* Dkt. No. 9-8 (attaching as exhibits
8 documents provided by Defendants in response to public records requests). Defendants cannot
9 credibly claim they are unfamiliar with their own data and documents. Defendants’ assertion that
10 they wish to “test [the] factual allegations” of the PI Motion is further belied by the fact that
11 Defendants have not yet sought discovery with respect to the PI Motion—and have actively
12 refused to even schedule the Rule 26(f) conference Plaintiffs requested. *See, e.g., Wilson v. Frito-*
13 *Lay North America, Inc.*, No. 12–1586 SC, 2015 WL 846546, at *2 (N.D. Cal. Feb. 25, 2015) (no
14 response deadline extension where party has “not demonstrated that they diligently pursued the
15 discovery at issue”).³

16 **B. Conflicts With Vacations and Other Case Deadlines Are Not Sufficient.**

17 Defendants also argue that the Court should extend their time to respond to the PI Motion
18 due to the personal vacation schedules of two attorneys and a preexisting deadline in a state court
19 matter that impacts one attorney. Dkt. No. 27 at 4. These are no doubt important matters. But
20 Defendants fail to explain why these short-term commitments should result in an entire *month’s*
21 delay in when Plaintiffs’ emergency motion can be heard. For example, Defendants offer no reason
22 why any other lawyers in the City Attorney’s Office—including any of the *three other experienced*
23 *attorneys* listed on the the Administrative Motion—are unable to help prepare Defendants’
24 response brief during co-counsel’s brief absences.⁴ In short, the convenience of Defendants’

25 ³ To the extent that Defendants introduce new evidence as part of their response to the PI Motion,
26 Plaintiffs should be given time to review it and the opportunity to seek related discovery. But that
issue is for another day.

27 ⁴ Defendants also state that Mr. Emery—one of the City attorneys “responsible for defending this
28 action”—is unable to attend the November 18, 2022 hearing. But the Court has scheduled the

1 counsel should not be prioritized over Plaintiffs’ vindication of fundamental constitutional rights.⁵

2 **C. Immediate and Irreparable Harm Is Likely to Occur if Extension Is Granted**

3 As detailed in the Complaint and PI Motion (Dkt. Nos. 1, 9), Defendants regularly violate
4 constitutional protections guaranteed to the City’s unhoused residents. Defendants violate the
5 Fourth Amendment when they seize and destroy personal property of unhoused residents on an
6 ongoing and daily basis. Furthermore, Defendants violate the Eighth Amendment by conducting
7 criminal enforcement against unhoused residents who do not have adequate access to shelter in the
8 City. This conduct is pervasive, ongoing, and traumatizing—and impacts hundreds of unhoused
9 San Franciscans. *See* Dkt. No. 9 at 23. These actions result in permanent physical, emotional, and
10 mental health consequences and threaten the very survival of unsheltered individuals. *See* Dkt. No.
11 9-1 ¶¶ 90–105.

12 Defendants’ request prioritizes the convenience of opposing counsel over the immediate
13 relief necessary for Plaintiffs. Left unsaid in the Administrative Motion is the fact that Defendants’
14 request will require the Court to postpone the November 18, 2022 hearing. Defendants’ proposed
15 opposition date of November 15, 2022 would not leave Plaintiffs a reasonable opportunity to file
16 a reply, nor allow the Court adequate opportunity to review the briefing in advance of the presently
17 scheduled hearing. Given the upcoming Thanksgiving holiday, Plaintiffs might not be heard by
18 the Court until December 2022 or later. Such a significant delay would be highly prejudicial to
19 Plaintiffs and the City’s unhoused residents, especially as we head into rapidly dropping
20 temperatures in the City during the winter, which will only exacerbate the harms the City inflicts
21 on unhoused individuals when it destroys their survival belongings.

22 Defendants dismissively argue that no urgency exists because Defendants were willing to

23
24 hearing to be heard remotely, and a small scheduling adjustment to accommodate a double-
25 booking should not entitle Defendants to a one-month extension.

26 ⁵ Moreover, Mr. Emery’s commitments in the *Lacy* case do not prevent Defendants from meeting
27 the deadlines in this case. Under the current briefing schedule, Mr. Emery and his colleagues will
28 have two additional weeks to prepare and file the appellate brief in *Lacy*. Defendants offer no
explanation why mid-October deadlines in this case prevent Defendants from meeting subsequent
deadlines in *Lacy*. *See* Mot. at 4. Inexplicably, Defendants have requested that the Court extend
the time to respond to the Complaint to November 3, 2022 (*see id.*)—the same day that Mr.
Emery’s appellate brief is in due in *Lacy*.

1 simply “agree to adhere to [their] written policies.” Dkt. No. 28-1 at 2. But, that promise rings
 2 hollow. A central crux of the PI Motion is that Defendants have not followed their own policies
 3 for years. *See* Dkt. No. 9 at 12-13. Indeed, since Plaintiffs filed the PI Motion—and even after
 4 Defendants’ counsel purported that Defendants would agree to follow their own policies—
 5 Defendants continued to destroy unhoused people’s survival belongings and threatened to arrest
 6 and cite unhoused individuals without first offering shelter. *See* Shroff Decl. ¶¶ 9-14; Rochelle
 7 Decl. ¶¶ 3-7. Plaintiffs continue to suffer immediate harms that have dire consequences for their
 8 lives until the PI Motion is granted.⁶

9 **D. Defendants Acted Preemptively and Failed to Meaningfully Meet-and-Confer.**

10 Defendants failed to adequately meet and confer with Plaintiffs prior to filing the instant
 11 motion. *See* Civil L. R. 6-3(a)(2). Plaintiffs had no details about Defense counsel’s prior
 12 commitments, but were diligently working to propose a resolution with Defendants at the very
 13 moment Defendants were filing their motion. Shroff Decl. ¶ 8, Ex. A. Had Defendants continued
 14 to engage in good-faith discussions with Plaintiffs, it is possible that these issues could have been
 15 resolved. Plaintiffs do not oppose a reasonable extension to the PI briefing schedule so long as it
 16 is accompanied by meaningful protections against further abuses by the City, and so long as
 17 Defendants cannot obstruct the discovery process by refusing to participate in a 26(f) conference.

18 **IV. CONCLUSION**

19 For the foregoing reasons, the Court should deny Defendants’ request for an extension to
 20 respond to the PI Motion. Alternatively, if the briefing schedule is significantly extended, Plaintiffs
 21 respectfully request that the Court impose certain notice and reporting requirements to help protect
 22 Plaintiffs against the harms they continue to suffer and request that the Court order Defendants to
 23 participate in a prompt Rule 26(f) conference.⁷

24 ⁶ Defendants’ insinuation that this litigation might somehow prevent the City from responding to
 25 street conditions that “obstruct the public right of way and create public health hazards” is
 26 misleading. Mot. at 2. This litigation is exclusively about Defendants’ targeting of unhoused
 27 people and their property due to their homelessness, and does not in any way seek to limit
 28 Defendants’ ability to take lawful, appropriate action to address genuine road and safety hazards.

⁷ Plaintiffs enclose a proposed order herewith suggesting the interim relief the Court should order
 to protect Plaintiffs from imminent harm in the event the Court grants Defendants’ four week
 extension.

1 Dated: October 11, 2022

Respectfully,

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3 By: /s/ Alfred C. Pfeiffer Jr.

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