Stephen T. Owens (SBN 082601)
sowens@agclawfirm.com
Eric G. Salbert (SBN 276073)
esalbert@agclawfirm.com
Christy M. Garcia (SBN 316570)
cgarcia@agclawfirm.com
ALVAREZ-GLASMAN & COLVIN
13181 Crossroads Parkway North, Suite 400
City of Industry, CA 91746
Tel. (562) 699-5500 · Fax (562) 692-2244

Attorneys for Defendants
CITY OF CHICO and CITY OF CHICO
POLICE DEPARTMENT

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

BOBBY WARREN; ANDY LAMBACH; JONATHON WILLIAMS; MICHAEL SAMUELSON; TRACY MILLER; TONA PETERSEN; CAROL BETH THOMPSON; CHRISTA STEVENS,

Plaintiffs,

vs.

CITY OF CHICO; CITY OF CHICO POLICE DEPARTMENT,

Defendants.

Case No.: 2:21-cv-00640-DAD-DMC

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR RELIEF FROM A FINAL JUDGMENT OR ORDER PURSUANT TO FRCP RULE 60(b)(5) AND 60(b)(6); MEMORANDUM OF POINTS AND AUTHORITIES

(Request for Judicial Notice, Defendants' Objections to Plaintiffs' Declarations, and Response to Plaintiffs' Objections to Defendants' Declarations filed concurrently herewith)

Hearing on Motion

Vacated

Complaint Filed: April 11, 2021
Case Closed: January 14, 2022

TABLE OF CONTENTS

PAGE(S)

TABLE OF AUTHORITIES

PAGE(S)

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

STATUTES

Federal Rules of Civil Procedure

OTHER AUTHORITY

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The City of Chico and the City of Chico Police Department (the "City") agreed to construct shelters and undertake processes that have provided hundreds of homeless persons with refuge from the elements. It is incontestable that the City has done all it agreed to do and more.[1] Plaintiffs' opposition does not dispute this fundamental fact. Moreover, the City has offered to stipulate to continue funding and operating the Pallet Shelters and the Alternative Camping Site and to remain subject to this Court's continuing jurisdiction in this case for the full five-year period set forth in the Stipulated Order re Settlement, Dismissal and Continuing Jurisdiction ("the Stipulated Order") entered on January 14, 2022.

However, two features of the Stipulated Order have repeatedly led to lengthy delays which have prevented the City from taking timely action necessary to protect the health and safety of the public:

1) The requirement that the City provide seventeen (17) days' notice prior to addressing even the most egregiously unsafe activities and unsanitary conditions in homeless encampments[2], coupled with restrictions which, as a practical matter, limit the City to cleaning up only one encampment at a time; and
2) The cumbersome dispute resolution mechanism that has repeatedly led to lengthy delays during which the City is powerless to take action necessary to protect the health and safety of the public. For example, the last issue that was submitted to the dispute resolution process (the City's desire to clean up the deplorable conditions at the Alternative Camping Site at

---

[1] Recall that, under the January 14, 2022 Stipulated Order, the City was obligated to build only **50** tiny homes, called "Pallet Shelters"; however, the City actually constructed **177 Pallet Shelters**, with two beds in each. The Pallet Shelters can accommodate **354 people**. (ECF No. 153-1, 6:19-26; ECF No. 213, 28:8-11.)

[2] This 17-day notice period can then be extended for an additional 7 days by Plaintiffs' counsel, which then requires another 72-hour notice to the homeless people living in the encampment located on public property. Thus, the City's original 17-day cleanup notice is extended to a total of 27 days. If, however, the disagreement cannot be resolved with Plaintiffs' counsel, the matter goes into the dispute resolution process, which often takes months. (ECF No. 213, 36:27-38:9, 56:4-22.)

Easton and Cohasset Roads) dragged on for more than six months and never was resolved, as explained in Section II.e., *infra* (see ECF Nos. 195-197, 199 & 203-208).

The City's concern about public health and safety is not to be dismissed as the airy persiflage of counsel. Plaintiffs blithely argue that, "For 2020 [there were] an average of 5.75 fires per month and for 2024, including suspected fires, [there were] an average of 3.5 fires per month, which is a 40% decrease" (ECF No. 216, 11:9-10), as though an annual average of 42 fires[3] caused by unsafe homeless/transient activities is fine and dandy. But all it takes is **one** fire to wipe out an entire town or a huge area of mountain communities. In 2018, the Camp Fire burned 153,336 acres in and around Paradise, killing 85 people and destroying 18,804 structures, only to be followed by the July 2024 Park Fire that originated in Chico's Bidwell Park and went on to burn 429,604 acres and destroy 709 structures in Butte and Tehama Counties. (See Defendants' Request for Judicial Notice filed concurrently with this Reply ("RJN"), ¶¶ 1 & 2, Exs. B & C.)

In light of the tremendous and very successful effort the City has made during the past 2 years and 9 months to provide shelter for the unhoused, as well as the change in the law governing the enforcement of municipal anti-camping ordinances, Chico should not continue to be constrained from taking *timely* action necessary to protect the health and safety of the public. This is especially true insofar as the Eighth Amendment concerns underlying the Stipulated Order have been eviscerated by the U.S. Supreme Court and insofar as Plaintiffs cannot point to a single Fourth or Fourteenth Amendment violation by the City since the Stipulated Order was entered.

Indeed, Plaintiffs' opposition—which does not include a single declaration from an actual Plaintiff in the action—is largely based on "what if" speculation about what nefarious activities the City might undertake if it were granted the relief it seeks. The answer is simple: This Court will retain jurisdiction of the parties and the issues for the full term of the Stipulated Order (*i.e.*, until January 2027); therefore, should the need arise, Plaintiffs can immediately seek appropriate injunctive relief.

---

[3] 3.5 fires per month x 12 months = 42 fires.

"Homelessness is complex. Its causes are many. So may be the public policy responses required to address it. At bottom, the question this case presents is whether the Eighth Amendment grants federal judges primary responsibility for assessing those causes and devising those responses. It does not." *City of Grants Pass v. Johnson*, 144 S.Ct. 2202, 2226 (2024).

The federalism concerns expressed in *Grants Pass* dovetail with those the Supreme Court articulated in the controlling precedent for the City's present motion for relief under Federal Rule of Civil Procedure 60(b): *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992) ("The Courts of Appeals have also observed that the public interest is a particularly significant reason for applying a flexible modification standard in institutional reform litigation because such decrees 'reach beyond the parties involved directly in the suit and impact on the public's right to the sound and efficient operation of its institutions.'"). Moreover, "'[O]ur cases recognize that local autonomy of [public agencies] is a vital national tradition, and that a district court must strive to restore state and local authorities to the control of a [public program] operating in compliance with the Constitution.'" *Horne v. Flores*, 557 U.S. 433, 488 (2009) (quoting *Missouri v. Jenkins*, 515 U.S. 70, 99 (1995)) (alterations added).

The Stipulated Order has become unworkable because its highly restrictive noticing requirements and lengthy dispute resolution procedures, all of which are based on now abrogated Ninth Circuit decisions, prevent timely, effective action to protect public health and safety by fire officials and law enforcement personnel, but have instead led to an endless, ineffective "whack-a-mole" situation in which the remaining homeless population, comprised of those who have been individually assessed, offered shelter by the City's Outreach & Engagement Team and declined the offer, simply move from one public place to another after the first location has finally been cleared pursuant to the procedures set out in the Stipulated Order.

The City has committed to continue to operate the Pallet Shelter until the end of the term of the Stipulated Order and to continue to operate the Alternate Camping Site until the end of this year. The City respectfully requests that all other aspects of the Stipulated Order be lifted so that the City may quickly address often exigent threats to public health and safety that cannot wait weeks or months to be

addressed. A denial of the relief sought in this motion would result in **Chico being the only city in the United States** subject to restrictions such as those contained in the Stipulated Order after the *Grants Pass* decision.

In light of the very substantial amount of money, time and effort the City has invested in addressing its homelessness problem, such a result would be most unfair. The City therefore approaches this Court sitting in equity and respectfully requests that it be permitted to enforce its camping ordinances in accordance with local, state and federal law, like every other city in the land.

II. ARGUMENT

a. Legal Standards

A party may seek relief under Federal Rule of Civil Procedure 60(b)(5) from a consent decree such as the Stipulated Order if "a significant change either in factual conditions or in law" makes continued enforcement "detrimental to the public interest." *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992). "[M]odification of a consent decree may be warranted when the statutory or decisional law has changed to make legal what the decree was designed to prevent." *Id*. at 388. The party seeking relief is required to establish that changed law and/or facts warrant relief. *Id*. at 383. Once that occurs, a court abuses its discretion "when it refuses to modify an injunction or consent decree in light of such changes." *Agostini v. Felton*, 521 U.S. 203, 215 (1997).

Several years after *Rufo*, the Supreme Court expounded on its reasoning in *Horne v. Flores*, 557 U.S. 433 (2009). There, the Court explained:

> Rule 60(b)(5) serves a particularly important function in what we have termed "institutional reform litigation." *Rufo*, *supra*, at 380…. For one thing, injunctions issued in such cases often remain in force for many years, and the passage of time frequently brings about changed circumstances—changes in the nature of the underlying problem, changes in governing law or its interpretation by the courts, and new policy insights—that warrant reexamination of the original judgment.
>
> Second, institutional reform injunctions often raise sensitive federalism concerns. Such litigation commonly involves areas of core state responsibility such as public education. See *Missouri v. Jenkins*, 515 U.S. 70, 99 (1995) ("[O]ur cases recognize that local autonomy of school districts is a vital national tradition, and that a district court must strive to restore state and local authorities to the control of a school system operating in

> compliance with the Constitution" (citations omitted)); *United States v. Lopez*, 514 U.S. 549, 580 (1995) (KENNEDY, J., concurring).
>
> Federalism concerns are heightened when, as in these cases, a federal court decree has the effect of dictating state or local budget priorities. States and local governments have limited funds. When a federal court orders that money be appropriated for one program, the effect is often to take funds away from other important programs. See *Jenkins*, *supra*, at 131 (THOMAS, J., concurring) ("A structural reform decree eviscerates a State's discretionary authority over its own program and budgets and forces state officials to reallocate state resources and funds").
>
> Finally, the dynamics of institutional reform litigation differ from those of other cases. Scholars have noted that public officials sometimes consent to, or refrain from vigorously opposing, decrees that go well beyond what is required by federal law. (Citations omitted).
>
> Injunctions of this sort bind state and local officials to the policy preferences of their predecessors and may thereby "improperly deprive future officials of their designated legislative and executive powers." *Frew v. Hawkins*, 540 U.S. 431, 441 (2004).
>
> ***
>
> It goes without saying that federal courts must vigilantly enforce federal law and must not hesitate in awarding necessary relief. But in recognition of the features of institutional reform decrees, we have held that courts must take a "flexible approach" to Rule 60(b)(5) motions addressing such decrees. *Rufo*, 502 U.S., at 381. A flexible approach allows courts to ensure that "responsibility for discharging the State's obligations is returned promptly to the State and its officials" when the circumstances warrant. *Frew*, *supra*, at 442. In applying this flexible approach, courts must remain attentive to the fact that "federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate [federal law] or does not flow from such a violation" *Milliken v. Bradley*, 433 U.S. 267, 282 (1977). "If [a federal consent decree is] not limited to reasonable and necessary implementations of federal law," it may "improperly deprive future officials of their designated legislative and executive powers." *Frew*, *supra*, at 441.
>
> For these reasons, a critical question in this Rule 60(b)(5) inquiry is whether the objective of the District Court's … order … has been achieved. If a durable remedy has been implemented, continued enforcement of the order is not only unnecessary, but improper. See *Milliken*, *supra*, at 282.

Horne, 557 U.S., at 447-450. And to the extent that a particular case does not fit within the above-described Rule 60(b)(5) framework, courts may utilize the "other reason" clause under Rule 60(b)(6) to "vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. U.S.*, 336

U.S. 601, 614 (1949); *see also*, *Kemp v. U.S.*, 596 U.S. 528, 533 (2022) ("This last option is available only when Rules 60(b)(1) through (b)(5) are inapplicable.").

b. The City Seeks Relief Due to Changes in the Law and Facts

Plaintiffs contend that the City cannot obtain relief based on a change in law, citing *Fed. Trade Comm'n v. Hewitt*, 68 F.4th 461 (9th Cir. 2023) and *Gonzalez v. Crosby*, 545 U.S. 524 (2005). Both of those cases are inapposite because they do not concern the continuing application of a consent decree in the context of institutional reform litigation. In *Hewitt*, the Ninth Circuit considered a claim for relief brought by a telemarketer that suffered an adverse money judgment for violating the Federal Trade Commission Act, a judgment the Ninth Circuit found was not executory and had no prospective application. *Hewitt*, 68 F.4th at 466-468.

Likewise, in *Gonzalez*, the Supreme Court considered whether a criminal petitioner could use Rule 60(b) to revive an abandoned and time-barred federal habeas corpus petition where the Court's precedent modified the statute of limitations for such petitions after the petitioner's case had become final and was no longer pending. *Gonzales*, 545 U.S. at 536-538. Neither *Hewitt* nor *Gonzalez* concerned matters where a local government had been hamstrung in addressing threats to public health and safety due to the continuing, prospective application of a consent decree premised on a subsequently overruled precedent decision.

Multiple cases more closely mirroring the instant matter have resulted in relief under Rule 60(b). In *Agostini v. Felton*, 521 U.S. 203, 237-240 (1997), the Supreme Court determined that a significant change in Establishment Clause law entitled the Board of Education of the City of New York ("NYC Board") and related petitioners to relief from an injunction barring the NYC Board from sending public school teachers into parochial schools to provide remedial education to disadvantaged children. More recently, in *California v. U.S. Envtl. Prot. Agency*, 978 F.3d 708, 713-719 (9th Cir. 2020), the Ninth Circuit relieved the Environmental Protection Agency ("EPA") from an injunction requiring it to promulgate a landfill emissions plan because the regulations requiring such a plan had been modified to provide the EPA more time to issue such regulations. Even in cases not involving

institutional reform, but where the prospective application of a judgment has been called into question due to a change in the law, the Ninth Circuit has provided relief under *Rufo* and *Agostini*. See *Bellevue Manor Associates v. U.S.*, 165 F.3d 1249 (9th Cir. 1999).

This case fits squarely within the category of "institutional reform litigation." The Ninth Circuit's decision in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) imposed a now-abrogated rule that heavily restricted how state and local governments in the western United States could address homelessness. As the Supreme Court recently explained:

> No other circuit has followed *Martin's* lead with respect to public-camping laws. Nor did the decision go unremarked within the Ninth Circuit. When the full court denied rehearing en banc, several judges wrote separately to note their dissent. … Judge Smith lamented that *Martin* had "shackle[d] the hands of public officials trying to redress the serious societal concern of homelessness." He predicted the decision would "wrea[k] havoc on local governments, residents, and businesses" across the American West.
>
> After *Martin*, similar suits proliferated against Western cities within the Ninth Circuit. As Judge Smith put it, "[i]f one picks up a map of the western United States and points to a city that appears on it there is a good chance that city has already faced" a judicial injunction based on *Martin* or the threat of one "in the few short years since [the Ninth Circuit] initiated its *Martin* experiment."

City of Grants Pass v. Johnson, 144 S.Ct. 2202, 2211 (citations omitted). *Martin* unquestionably created a "sea change" in Eighth Amendment law that required state and local governments to reform their policies addressing various issues related to homelessness, without clear direction as to what *Martin* required. *Id*. at 2225 ("Those unavoidable questions have plunged courts and cities across the Ninth Circuit into waves of litigation."). Circuit Judge Smith's prediction proved prescient as Chico became embroiled in litigation largely premised on the ill-defined yet newfound principles espoused in *Martin*. Now that the legal underpinning of the Stipulated Order has been removed, the City seeks relief under Rule 60(b), just as was provided in *Agostini v. Felton*, 521 U.S. 203 (1997) and *California v. U.S. Envtl. Prot. Agency*, 978 F.3d 708 (9th Cir. 2020).

As Plaintiffs note, they also advanced claims based on, *inter alia*, Fourth and Fourteenth Amendment principles. However, Plaintiffs do not, and cannot, claim that the City has violated any

property or other rights since the Stipulated Order was entered—a fact that, as explained in Section II.c., *infra*, weighs in favor of returning responsibility for compliance with the law to the City.

At the time the City entered into the Settlement Agreement, it could not anticipate that the Supreme Court would overturn *Martin*. No petition for certiorari in the *Grants Pass* case had been presented to the Supreme Court at that time and no other petition for certiorari challenging the *Martin* holding had been accepted by the Supreme Court. Even if there had been, such an action would not have provided the City with a reasonable expectation that *Martin* would be overturned during the term of the Settlement Agreement. "The Supreme Court receives 7,000 to 8,000 petitions for certiorari for review each year but chooses approximately 1% for full review." A. Bustos & T. Jacobi, *Judicial Choice Among Cases for Certiorari*, 27 Sup. Ct. Econ. Rev. 117, 122 (2019). To expect a case to be accepted in a one-out-of-one-hundred chance is unreasonable, and to expect a certain result would be even more so, especially where scholars need to devise complicated formulas to analyze general factors as to why a case might be selected for review in the first place. *Id.* at 118-148. Indeed, the Supreme Court had already *denied* certiorari in *Martin* before the settlement agreement in this case was entered into. *City of Boise v. Martin*, 140 S.Ct. 647 (2019).

As Plaintiffs acknowledge, the City has relocated many homeless persons into shelter. (Opposition, ECF No. 216, 4:18-23, 5:6-11, 8:26-9:2.) Again, that positive change in circumstances favors modification of the Stipulated Order, as discussed below.

There have also been adverse changes in circumstances, not anticipated at the time of settlement, that warrant relief. The City could not have and did not anticipate that after building a multi-million dollar shelter facility equipped with climate-controlled rooms, to be operated concurrently with a second, privately operated, climate-controlled shelter, some homeless persons would refuse offers of shelter several times over. (ECF No. 213, 64:11-65:9; ECF No. 213, 57:6-11.) The City could not anticipate that an annual *average* of 42 uncontrolled, homeless/transient-caused fires (ECF No. 213, 50:20-24; Opposition, ECF No. 216, 11:5-13) would continue to break out; nor the widespread public drug sales and use that would develop despite the provision of social services at the

shelter sites; nor the extent of violent criminal activity that has taken place in and around the shelter sites; nor the sundry threats to public health and safety produced by unhygienic behaviors despite the City's maintenance of public sanitary facilities; nor the monetary and social costs required to deal with the foregoing issues at the expense of other governmental functions. (Motion, ECF No. 213, 17:16-25, 18:5-23:5.) Regardless of whether the City now disposes of fewer tons of homeless persons' trash than was required in the past as Plaintiffs argue, the amount of trash collected from homeless encampments on public spaces this year will total approximately 256 tons.[4] The continued presence of homeless encampments in public spaces throughout the City—including the downtown Plaza—places a considerable strain on the City's fire, police and public works departments, their personnel, facilities and equipment, and the City's budget, all of which are limited. (ECF No. 213, 32:11-33:23, 34:27-35:3, 35:14-21, 42:10-45:8, 48:11-49:13, 50:25-51:2, 53:22-25, 54:9-57:22.)

Yet Plaintiffs assert, ***with no supporting evidence***, "The Settlement has restored parks and public spaces to their intended uses." (Opposition, ECF No. 216, 9:26.) **That statement is flatly false**, as proven by the Standridge, Gustafson and Ratto Declarations filed in support of the Motion (ECF No. 213, 49:22-50:17, 50:20-24, 42:10-11, 53:22-25, 54:11-55:20.)

Providing the relief sought will enable the City to timely address the indisputably serious threats to public health and safety such as the recent Cohasset Bridge fire that caused structural damage and necessitated costly repairs, and the repeated fires in the Lindo Channel that threaten both the homeless and the housed residents living in close proximity to the Lindo Channel. (ECF No. 213, 49:2-13, 50:14-17, 35:4-13.) Although the City was able to clear the Cohasset bridge to make repairs, it was, and remains, unable to enforce Municipal Code provisions that would prevent homeless persons from living and starting fires under the bridge in the first place. In this case, where Plaintiffs have hailed the success associated with the City's actions and cannot demonstrate that the City has violated Plaintiffs'

---

[4] In the first 8 months of 2024, the City's Public Works Department collected and disposed of 171 tons of trash and debris from homeless encampments located on public property in the City (ECF No. 213, 42:10-11) for an average of 21.38 tons per month, which yields a total of 256.56 tons of garbage per year in public spaces in 2024.

rights since the Stipulated Order was entered, *Rufo's* "flexible approach" should afford the City the ability to enforce the law through the "collective wisdom … [its] people possess in deciding 'how best to handle' a pressing social question like homelessness." *Grants Pass*, 144 S.Ct. at 2226.

Furthermore, Plaintiffs' claim that they would need to file an entirely new lawsuit to address Fourth and Fourteenth Amendment concerns over any ordinance the City might adopt or modify in the future is speculative nonsense because this Court will retain jurisdiction through January 2027, as specified in the Stipulated Order.

c. The City has Complied With the Stipulated Order and Responsibility for Complying with the Law Should be Returned to the City

"'[O]ur cases recognize that local autonomy of [public agencies] is a vital national tradition, and that a district court must strive to restore state and local authorities to the control of a [public program] operating in compliance with the Constitution.'" *Horne*, 557 U.S. at 448 (quoting *Missouri v. Jenkins*, 515 U.S. 70, 99 (1995)) (alterations added). "In many cases, an enjoined party's good-faith compliance with a decree figures prominently in the court's dissolution inquiry, because it is a proxy for determining whether the underlying problem has been remedied." *Orantes-Hernandez v. Gonzales*, 504 F.Supp.2d. 825, 845 (C.D. Cal. 2007).

In *Horne*, the Supreme Court considered whether to provide relief under Rule 60(b)(5) to the Nogales Unified School District ("Nogales") from a declaratory judgment arising from allegations that Nogales had violated the Equal Educational Opportunities Act of 1974 ("EEOA"). *Horne*, 557 U.S. at 438-439. Reversing the Ninth Circuit, the Court explained that "[t]he Court of Appeals did not engage in the Rule 60(b)(5) analysis" described in Section II.a., *supra*. *Id*. at 450. "Rather than applying a flexible standard that seeks to return control to state and local officials as soon as a violation of federal law has been remedied, the Court of Appeals used a heightened standard that paid insufficient attention to federalism concerns." *Id*. at 450-451. And instead of inquiring broadly into whether Nogales had demonstrated compliance with the law, the Ninth Circuit erroneously focused on whether Nogales had complied with the original judgment. *Id*. at 451. Because the Supreme Court found at least four factual

and legal circumstances relevant to a Rule 60(b)(5) analysis that the lower courts had failed to address, including the enactment of the No Child Left Behind Act ("NCLB"), the matter was remanded for an appropriate analysis of the relevant circumstances. *Id*. at 459-472.

The circumstances in which the City finds itself warrant relief more strongly than those in *Horne*. This is because *Horne* necessitated a review of whether Nogales had complied with the EEOA following the post-judgment enactment of NCLB, which "marked a dramatic shift in federal education policy," but did not operate to invalidate the EEOA. *Horne*, 557 U.S. at 461-462. By contrast, following the entry of the Stipulated Order in the present case, the Supreme Court, in *Grants Pass*, overturned *Martin* and its progeny, completely eviscerating the core basis for Plaintiffs' principal claims, and one that largely defined the provisions of the Settlement Agreement. Moreover, Plaintiffs describe the increased availability of shelter in the City, and the City's efforts to relocate homeless persons into shelter, as a big success, which it was and is. And not only are Plaintiffs unable to demonstrate that the City has failed to comply with either the terms of the Stipulated Order or existing law, but the City has agreed to proceed above and beyond what the law requires (even under *Martin*, which did not require public agencies to provide shelter) by continuing to operate its shelter until at least the end of the settlement term and to operate one alternative camping site until at least the end of the year.

In another homelessness case, *Peery v. City of Miami*, 977 F.3d 1061 (11th Cir. 2020), the City of Miami was found to be in substantial compliance with the requirements of a consent decree prohibiting the arrest of homeless individuals without cause and without protecting their property, and thus, the decree was satisfied and termination of the decree was warranted where the City and surrounding community had developed a wide array of programs to support continued compliance, such as programs to provide shelter, medical care, and other services.

Another factor warranting relief in the present case is Governor Gavin Newsom's post-settlement executive order that mandates the clearing of homeless encampments, lest non-complying cities face the prospect of losing the state funding allocated to them.

d. Continued Enforcement of the Settlement Agreement Would be Detrimental to the Public Interest

"The Courts of Appeals have also observed that the public interest is a particularly significant reason for applying a flexible modification standard in institutional reform litigation because such decrees 'reach beyond the parties involved directly in the suit and impact on the public's right to the sound and efficient operation of its institutions.'" *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 381 (1992) (quoting *Heath v. De Courcy*, 888 F.2d 1105, 1109 (6th Cir. 1989). This is particularly true in the context of homelessness litigation, where the Supreme Court has reasoned that there may be a number of public policy responses required to address homelessness, but in the last analysis the Eighth Amendment does not grant federal judges the primary responsibility for assessing either the causes of homelessness or devising the appropriate responses. *City of Grants Pass v. Johnson*, 144 S.Ct. 2202, 2226 (2024).

Continued enforcement of the Stipulated Order would be detrimental to the public interest because that would force the City to continue the ineffective process of providing 17-days' notice of cleanup and sheltering efforts limited to either one location regardless of the number of homeless persons there or three locations with no more than a total of fifty (50) occupants. (Settlement Agreement, ECF No. 153-1, 11:5-16:11.) Because homeless persons have increasingly taken advantage of that process by ignoring offers of shelter (ECF No. 213, 64:11-65:9; ECF No. 213, 57:6-11), and because there no longer exists any legal requirement for such a procedure, it is both ineffective and unsound.

Homeless persons have also exploited the fact that the Stipulated Order does not permit the City to enforce its municipal ordinances on homeless persons who decide to ignore offers of shelter in favor of moving to another public property (ECF No. 153-1, 15:11-17), requiring the City to allocate limited personnel and financial resources away from other public endeavors and toward the continual cleanup of properties damaged by transient encampments (ECF No. 213, 42:6-45:8). Some of the numerous letters submitted to this Court by members of the public express residents' dismay with the City's inability to efficiently address various public health and safety issues. (*E.g.*, ECF Nos. 170, 182, 187 &

192.) Although the City cannot predict the future, if the public has a right to sound and efficient operation of their local government, continuing the restrictions in the Stipulated Order will operate as a detriment to that right post-*Grants Pass* in view of recent developments demonstrating that an increasing number of homeless persons feel free to ignore offers of shelter and remain encamped on public property. And while the future may not be certain, there exist no facts suggesting that instances of record-breaking wildfires, violent crime, theft, drug use and sales, and other threats to public health and safety will abate if the status quo is allowed to persist. Plaintiffs do not claim otherwise—neither Plaintiffs' counsel who filed declarations, nor the named Plaintiffs who did not.

e. The City Should Not be Required to Proceed With the Dispute Resolution Process Prior to Filing its Motion Seeking Relief From the Same

Through its motion, the City seeks to continue funding and operating the Pallet Shelter through at least the end of the Stipulated Order's term in early 2027, and to maintain one "alternate site" at a location of the City's choosing until at least the end of 2024. Those are the only points related to the Stipulated Order the City would like to continue and seeks relief from all other terms, including but not limited to the dispute resolution terms in Paragraph 16 of the Settlement Agreement. The City requests such relief because dispute resolution proceedings have consumed an inordinate amount of time and severely restrict the City's ability to address public health and safety issues in a timely manner. More specifically, the most recent dispute resolution proceedings commenced shortly before December 13, 2023, and did not end until shortly after June 17, 2024, without any resolution of the few issues presented during the 6-month-long dispute resolution proceedings. (ECF Nos. 195-197, 199 & 203-208.) Threats to public health and safety do not "pause" for dispute resolution proceedings. Even though Plaintiffs argue that a decrease from 5.75 fires per month to 3.5 fires per month is to be lauded, it takes only one fire to upend the lives of Chicoans and completely decimate nearby communities. (ECF No. 216, 11:9-10.) Accordingly, the City respectfully requests that this Court provide relief from, *inter alia*, the dispute resolution procedures that prevent the City from taking action to abate threats to public health and safety.

f. The City's Requested Relief is Suitably Tailored to the Changes in Circumstances

"Once a moving party has met its burden of establishing either a change in fact or in law warranting modification of a consent decree, the District Court should determine whether the proposed modification is suitably tailored to the changed circumstance." *Rufo*, *supra*, at 391. "Narrow tailoring, however, is plainly not required. In addition to the fact that *Rufo* speaks only of suitable tailoring, a narrowly tailored requirement is at odds with the rationale of the *Rufo* decision. Narrow tailoring, and its cousin, least restrictive means analysis, are strict standards. They have no place in the flexible approach established in *Rufo*." *Benjamin v. Jacobson*, 923 F.Supp. 517, 522 (S.D.N.Y. 1996); accord *Horne*, 557 U.S. at 450-451 ("Rather than applying a flexible standard that seeks to return control to state and local officials as soon as a violation of federal law has been remedied, the Court of Appeals used a heightened standard that paid insufficient attention to federalism concerns.").

Three factors guide the analysis of whether a proposed modification is "suitably tailored." First, "a modification must not create or perpetuate a constitutional violation." *Rufo*, 502 U.S., at 391. Second, "[a] proposed modification should not strive to rewrite a consent decree so that it [does no more than] conform[] to the constitutional floor." *Id*. Finally, principles of federalism "require that the district court defer to local government administrators, who have the 'primary responsibility for elucidating, assessing, and solving' the problems of institutional reform, to resolve the intricacies of implementing a decree modification." *Id*. at 392 (quoting *Brown v. Board of Educ.*, 349 U.S. 294, 299 (1955)). More specifically, district courts should ascribe "significant weight" to the views of local government officials, including concerns regarding financial constraints, for they "are appropriately considered in tailoring a consent decree modification." *Rufo*, 502 U.S., at 392-393 & 392 n. 14.

Here, the City's requested relief will not create or perpetuate a constitutional violation. The Supreme Court has removed the Eighth Amendment underpinning the Stipulated Order, and there is no indication that the City will violate any Fourth or Fourteenth Amendment mandates; rather, Plaintiffs recognize the positive results the City has helped to achieve. Next, the City's requested relief does not reach to the "constitutional floor," but instead confirms that the City will continue to operate its Pallet Shelters until expiration of the Stipulated Order's term and will maintain one alternate camping site

until the end of the year, both of which go *beyond* what the Constitution required, both before and after *Martin*. Finally, this Court should afford significant weight to the facts presented by the City's officials, and shift decision-making back to them, because the very concepts of federalism at issue in *Rufo* exist with respect to homelessness-related policymaking, as confirmed by the Supreme Court's decision in *Grants Pass*.

III. CONCLUSION

Based on the reasons presented in the City's motion, this reply, and any made during potential oral argument, the City respectfully requests that the Court grant relief under Federal Rule of Civil Procedure 60(b) from (1) restrictions in the Stipulated Order on the City's enforcement of camping ordinances beyond what is required under local, state and federal law; and (2) any requirement to engage with Plaintiffs or their counsel in the dispute resolution process contained in the Stipulated Order prior to enforcing its camping ordinances in accordance with local, state and federal law.

If this Court would find further facts pertaining to changed circumstances (or any other matter) helpful in resolving this matter, the City respectfully requests the opportunity to provide supplemental briefing and declarations to address the same.

DATED: October 4, 2024

Respectfully submitted,

Stephen T. Owens
Eric G. Salbert
Christy M. Garcia
ALVAREZ-GLASMAN & COLVIN

/s/ *Eric G. Salbert*
Attorneys for Defendants
CITY OF CHICO and CITY OF CHICO POLICE DEPARTMENT

CERTIFICATE OF SERVICE

Bobby Warren, et al. v. City of Chico, et al.

Case No.: 2:21-cv-00640-DAD-DMC

I hereby certify that I electronically filed the foregoing document(s) with the Clerk of the United States District Court, Eastern District of California - by using the CM/ECF system on October 4, 2024.

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

Executed on October 4, 2024, at City of Industry, California.

/s/ Juanita Vasquez
Juanita Vasquez