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15 UNITED STATES DISTRICT COURT
16
17 EASTERN DISTRICT OF CALIFORNIA
18

19 BOBBY WARREN; ANDY LAMBACH;
20 JONATHON WILLIAMS; MICHAEL
21 SAMUELSON; TRACY MILLER; TONA
22 PETERSON; CAROL BETH THOMPSON;
23 CHRISTA STEVENS,

24 Plaintiffs,

25 v.

26 CITY OF CHICO; CITY OF CHICO POLICE
27 DEPARTMENT,

28 Defendants.

Case No. 2:21-CV-00640-DAD-AC

**DEFENDANTS' REPLY TO PLAINTIFFS'
OPPOSITION TO MOTION FOR RELIEF
FROM FINAL JUDGMENT OR ORDER
PURSUANT TO FRCP RULE 60(b)(4)
AND 60(b)(5)**

Hearing on Motion:

Judge: Hon. Dale A. Drozd
Date: October 6, 2025
Time: 1:30 p.m.
Crtrm: 4 / 15th Floor

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1 **I. INTRODUCTION**

2 Plaintiffs' Opposition to the City of Chico's and the City of Chico Police Department's
 3 (collectively, "City") Motion for Relief under Federal Rule of Civil Procedure 60 fails to overcome
 4 the Motion. While the opposition contains multiple ineffective side arguments, two core issues come
 5 to the forefront. First, Plaintiffs speciously argue that the City's Rule 60 challenge is an
 6 impermissible procedural challenge because it attacks the lack of class action certification. This is
 7 incorrect because the Motion challenges the resulting exercise of jurisdiction over nonparties.
 8 Second, Plaintiffs argue the Settlement Agreement cedes no City control over its police power. This
 9 is also incorrect and, in a failed attempt to support their position, Plaintiffs distort and disregard
 10 portions of the Settlement Agreement which grant Plaintiffs and their Counsel veto authority over
 11 the City. It is these provisions that rendering the Agreement illegal and the jurisdiction it affords
 12 error. Grant of the Motion is appropriate.

13 **II. LAW AND ARGUMENT**

14 **A. THE SETTLEMENT AGREEMENT APPLIES BEYOND PLAINTIFFS AND THE CITY.**

15 Attempting to rebut the City's class action argument, Plaintiffs make the misleading claim
 16 that "[Defendants] make this argument even though Plaintiffs' lawsuit has never been a class action
 17 and no person, other than Plaintiffs and Defendants, are *bound* by the Settlement." (*Id.* at 4, 13–14
 18 (emphasis added).) That is incorrect.

19 Plaintiffs artfully use the word "bound" to imply that, because Plaintiffs and the City are the
 20 executing parties, no one over whom the Court lacks jurisdiction falls in the Agreement's
 21 jurisdictional scope. This is a distortion. The Agreement says it applies to all "Homeless Persons,"
 22 defined as any person within the meaning of 42 U.S.C. § 11302. (ECF 153, Agreement ¶ 3(c).) The
 23 Agreement states that "Plaintiffs' counsel may present disputes in the dispute resolution process
 24 which not only affect Plaintiffs but any other aggrieved Homeless Person in the City." (*Id.* ¶ 16.)

25 Moreover, the definition of "enforcement" of anti-camping measures includes citing,
 26 arresting, moving, and seizing the property of any "Homeless Person." (*Id.* ¶ 3(d).) The Agreement
 27 mandates that the City follow enforcement procedures for *every* Homeless Person. (*Id.* ¶ 10.) If any
 28 Homeless Person claims the City has violated the Agreement, they, Plaintiffs, **or Plaintiffs'**

1 **Counsel** can freeze the City’s enforcement of its anti-camping (or “analogous”) ordinances. (*Id.* ¶¶
2 10, 16.)

3 *Plaintiffs concede this.* Plaintiffs admit that *any* “Homeless Person who is not one of the
4 plaintiffs may utilize the dispute resolution process available through the Settlement[.]” (Opp. at
5 12.) The dispute resolution process entails, in blackletter language, engaging the Court’s jurisdiction
6 “for the purposes of implementation, enforcement and/or modification of [the] Agreement[.]”
7 (Agreement ¶ 16; *see, e.g., id.* ¶ 10(b)–(c).) Even if “Homeless Persons” are not *required* to engage
8 in dispute resolution if they choose to disregard a purported violation, the point is irrelevant. It does
9 not change that *any* Homeless Person—or Plaintiffs or Plaintiffs’ Counsel on their behalf—may
10 invoke the Court’s retained jurisdiction for a non-party. (Agreement ¶ 16; *see, e.g., id.* ¶ 10(b)–(c).)

11 **B. THE AGREEMENT AND FINAL ORDER ARE VOID FOR JURISDICTIONAL ERROR**
12 **BECAUSE THERE IS NO BASIS FOR JURISDICTION OVER UNNAMED PARTIES.**

13 **1. The City Challenges the Court’s Jurisdiction.**

14 In part III.A. of their Opposition, Plaintiffs appear to claim that the City challenges not
15 jurisdictional error under Federal Rule of Civil Procedure 60(b)(4) but “the remedies provided for
16 in the Settlement and the Court’s retention of jurisdiction over the Settlement.” (Opp. at 7–9.)
17 Plaintiffs are incorrect. The City’s motion attacks (1) the Court’s jurisdiction to afford relief to
18 anyone but the parties when no exception to personal or subject-matter jurisdiction limits applied;
19 and (2) retention of jurisdiction in the Agreement since the Agreement itself is unlawful.

20 The City challenges jurisdiction, not a remedy. Plaintiffs’ reliance on United States *Aid*
21 *Funds v. Espinosa*, 559 U.S. 260 (2010) and *Federal Trade Commission v. Hewitt*, 68 F.4th 461
22 (9th Cir. 2023) to argue otherwise is misplaced.

23 In *Espinosa*, a debtor filed for bankruptcy and submitted proposed a plan providing for
24 repayment of principal and discharge of the interest on outstanding loans. (*Espinosa*, 559 U.S. at
25 264.) After getting notice of the plan, a creditor filed a proof of claim. (*Id.* at 265.) The creditor did
26 not object to the plan or discharge of interest or initiate any adversarial challenge. (*Id.* at 265–66.)

27 Later, *Espinosa* moved to hold the creditor in contempt when it attempted to collect interest.
28 (*Id.*) The creditor challenged judgment and complained that the Bankruptcy Code required the loans

1 to be discharged in an adversarial proceeding and because none occurred, the plan was void. (*Id.*)
 2 The Supreme Court wrote that such a proceeding was a procedural precondition to loan discharge,
 3 not a jurisdictional limitation on the Bankruptcy Court. (*Id.* at 270–72.)

4 Similarly, in *Hewitt*, a fraudster was ordered to pay half a billion dollars in equitable
 5 monetary relief, a remedy which the Supreme Court later held unlawful. (*Hewitt*, 68 F.4th at 464–
 6 65.) The Ninth Circuit affirmed denial of the fraudster’s Rule 60 motion because he challenged the
 7 courts’ legal authority to order the equitable remedy—he did not challenge the court’s subject-matter
 8 or personal jurisdiction over the case. (*Id.* at 466.)

9 Not so here. The City does not say, for example, that because no class certification occurred,
 10 like the absent adversarial hearing in *Espinosa*, the judgment is automatically void. (*See Espinosa*,
 11 559 U.S. at 264–66; Mot. at 9–15.) Nor does it challenge the Court’s authority to afford a *type of*
 12 *remedy* (e.g., injunctive) as in *Hewitt*. (*Hewitt*, 68 F.4th at 464–66; Mot. at 16–21.) The City says
 13 that because no certification occurred, no exception to personal jurisdiction applied; so, the class-
 14 wide settlement is unlawful since the Court never acquired jurisdiction over unnamed parties with
 15 standing, itself mandatory for subject-matter jurisdiction. (Mot. at 9–15.) It further says there is no
 16 basis for the Court to exercise jurisdiction over anyone under the Agreement because it was illegal
 17 from its inception. (Mot. at 16–21.) Thus, the City challenges not the Court’s procedural authority
 18 but its subject-matter and personal jurisdiction, “both of which concern the power to proceed with
 19 a case at all.” (*United States v. Philip Morris USA Inc.*, 840 F.3d 844, 850 (D.C. Cir. 2016).)

20 **2. Federal Rule of Civil Procedure 23 is a Threshold to Jurisdiction Over** 21 **Unnamed Parties and Their Claims Which Has Not Been Met Here.**

22 Plaintiffs argue Rule 23 has no bearing because it is procedural, they did not bring a class
 23 action, what the City challenges is procedure. (Opp. at 10–11, 12–15.) To the contrary, the City
 24 argues the Agreement and final order are jurisdictionally defective. (Mot. at 9–15.)

25 The exercise of jurisdiction over and extension of relief to a class of nonparties in the absence
 26 of class certification is a fatal jurisdictional error. (*Id.*) Were there no extension of jurisdiction to
 27 others, judgment wouldn’t be affected. (*See id.*)

28 Plaintiffs’ own citations thwart their position. (E.g., Opp. at 9–10.) The determinative factor

1 in *Hewitt* was that the fraudster did not “challenge the court’s *subject-matter or personal jurisdiction*
 2 *over the case*; instead, he challenge[d] the “court’s authority to impose certain remedies.” (*Hewitt*,
 3 68 F.4th at 466 (emphasis added).) The opposite is true here.

4 Rule 23 alone is procedural. Its effect is not. In a typical case, the Court must independently
 5 have jurisdiction over every party and claim. (*See, e.g., Sinochem Int’l Co. v. Malaysia Int’l Shipping*
 6 *Corp.*, 549 U.S. 422, 430–31 (2007); *In re JPMorgan Chase Derivative Litig.*, 263 F. Supp. 3d 920,
 7 928 (E.D. Cal. 2017).) Every plaintiff must, to trigger subject-matter jurisdiction, have standing to
 8 sue. (*Ernest Bock, LLC v. Steelman*, 76 F.4th 827, 834–35 (2023); *Ellis v. City of La Mesa*, 990 F.2d
 9 1518, 1523 (9th Cir. 1993).) Class actions are different. “The class action is an exception to the
 10 usual rule that litigation is conducted by and on behalf of the individual named parties only.” (*Wal-*
 11 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348–49 (2011).) In a class action, it is the named plaintiffs
 12 as class representatives and their claims that matter for jurisdictional questions. (*Lewis v. Casey*,
 13 518 U.S. 343, 357 (1996); *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007);
 14 *Bruno v. Quten Res. Inst., LLC*, 280 F.R.D. 524, 532 (C.D. Cal. 2011).) Only named plaintiffs must
 15 satisfy jurisdictional Article III standing in a class action. (*E.g., Bates*, 511 F.3d at 985; *Waller v.*
 16 *Hewlett-Packard Co.*, 295 F.R.D. 472, 479 (S.D. Cal. 2013).) Only named plaintiffs’ claims matter
 17 for issues of personal jurisdiction. (*See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–
 18 12 (1985); *Owino v. CoreCivic, Inc.*, 700 F.Supp.3d 939, 944–47 (S.D. Cal. 2023).)

19 ***But those jurisdictional exceptions are lawful “only if” Rule 23 is satisfied.*** (*See, e.g.,*
 20 *Trump v. Casa, Inc.*, 145 S.Ct. 2540, 2555–56 (2025).) Class resolution is antecedent to Article III
 21 issues. (*Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 612 (1997) (stating that because class issues
 22 may be dispositive, they are “logically antecedent to the existence of any Article III issues, [and] it
 23 is appropriate to reach them first[.]”); *Potter v. Huges*, 546 F.3d 1051, 1055 (2021).) It is the class
 24 action that empowers the court to exercise jurisdiction over absent parties otherwise “immune to its
 25 power.” (*Molock v. Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 298 (D.C. Cir. 2020).) “It is class
 26 certification that brings unnamed class members into the action and triggers due process limitations
 27 on a court’s exercise of personal jurisdiction over their claims.” (*Id.*)

28 At bottom, unlike a consenting plaintiff who files litigation, the unnamed, nonparty class of

1 “Homeless Persons” is not properly before the Court. (*Adam v. Saenger*, 303 U.S. 59, 67–68 (1938).)
 2 Those individuals did not sue the City and as Plaintiffs admit, they were not part of any Court
 3 approved class so there was no personal jurisdiction. (*See, e.g., id.; Matter of Star & Crescent Boat*
 4 *Co., Inc.*, 549 F.Supp.3d 1145, 1153 (S.D. Cal. 2021).) There was no analysis, let alone proof, of
 5 any Article III injury for which the City is responsible such that they would have standing giving
 6 rise to subject matter jurisdiction. (*See, e.g., Ernest Bock*, 76 F.4th at 834–35.) Yet the Agreement
 7 and Final Order purport to extend the Court’s retained jurisdiction to any dispute any dispute raised
 8 by the unlimited class of “Homeless Persons” or by Counsel on their behalf. (Agreement ¶¶ 10, 16.)
 9 But the Court never acquired jurisdiction over those persons because the antecedent class
 10 certification threshold never enabled it. (*See, e.g., Molock*, 952 F.3d at 298.)

11 That is a jurisdictional issue, not a procedural one. It is not a question of the Court’s general
 12 authority to issue a type of relief but of the Court’s ability to obtain and exercise power over people.
 13 (*See id.; Philip Morris*, 840 F.3d at 850.) Rule 23’s jurisdictional import in giving the Court power
 14 over absent parties bears directly upon this case and the class-wide relief afforded to the *de facto*
 15 class of “Homeless Persons.” The jurisdictional effect, in other words, is not a question of the
 16 Court’s ability to impose certain remedies as Plaintiffs so often cite *Hewitt* to proclaim. It is a
 17 question of the Court’s subject-matter or personal jurisdiction. (*Hewitt*, 68 F.4th at 466; *Philip*
 18 *Morris*, 840 F.3d at 850.) That is an error that Rule 60 allows the City to challenge. (Fed. R. Civ. P.
 19 60(b)(4); *Hewitt*, 68 F.4th at 465–66.)

20 Plaintiffs’ protestations that they did not plead a class action are for naught. (*Cf. Opp.* at 10,
 21 12–13, 15.) Plaintiffs imply that Rule 23 cannot be relevant because they were not required to bring
 22 a class action. (*Id.*) No one said they were. (*See Mot.* at 11–14.) What the City said is that, without
 23 a class action, the Agreement and Final Order unlawfully afford class relief to and extend the Court’s
 24 jurisdiction over nonparties without the class certification that would allow that jurisdiction. (*Id.*)

25 That conclusion is neither surprising nor groundless. Just this year, the Supreme Court
 26 warned against the creation of “*de facto* class actions at will” by extending relief to and binding
 27 parties and nonparties alike through jurisdictional “shortcut[s]” like universal injunctions. (*Casa,*
 28 *Inc.*, 145 S.Ct. at 2555–56.) Plaintiffs’ assertions are effectively that no such workaround or binding

effect on nonparties exists here. (*See* Opp. at 10–15.) But those claims ring hollow when, to use just one example, the Agreement turns Plaintiffs’ Counsel into class counsel for the class of all “Homeless Persons” who happen to come into the City. (Agreement ¶ 10.) The Agreement requires that “[a]ny requirement that a *Homeless Person* relocate themselves or their personal property from Public Property and/or Enforcement of the Anti-Camping Ordinances and Regulations against a Homeless Person will be preceded by notice to *Plaintiffs’ counsel*[.]” (*Id.* (emphases added).) Plaintiffs’ and their Counsel may then overrule and freeze any City action they allege is wrongful. (*Id.* ¶¶ 3(a), 10(c), 16.) And then, rather than Homeless Persons separately suing for purported breach, Plaintiffs and Plaintiffs’ Counsel must bring ever new parties into *this case* irrespective of jurisdictional issues that would have vitiated jurisdiction otherwise. (*Id.* ¶¶ 10(c), 16.)

Plaintiffs say that Counsel can object to City action only if there is insufficient shelter space in the City. (*E.g.*, Opp. at 18–19.) But that is a misleadingly incomplete reading. The dispute procedures allow Plaintiffs, Counsel, and Homeless Persons to challenge any action the City takes with respect to “Homeless Persons.” (Agreement ¶ 16.) Plaintiffs (and Counsel) act as representative stand-ins for a class. (*See id.*; *Casa, Inc.*, 145 S.Ct. at 2555–56.) The Agreement and Order thus impermissibly create a *de facto* representative suit with none of the threshold requirements for jurisdiction having been satisfied.¹ (Agreement ¶ 16; *see Casa, Inc.*, 145 S.Ct. at 2555–56.)

3. The Jurisdictional Error Renders the Agreement and Final Order Void Because There Is No Colorable Basis for Jurisdiction.

Rule 60(b)(4) applies when a judgment is based on a (1) jurisdictional error, or (2) certain due process violations. (*Espinosa*, 559 U.S. at 271; *Hewitt*, 68 F.4th at 465–67.) But Plaintiffs are wrong that the Agreement and order are not void due to wanting jurisdiction. (Opp. at 7–9. 12–15.)

¹ Plaintiffs bemoan, as if it is unusual practice, that the City cites *Walter v. Leprino Foods Co.*, 670 F.Supp.3d 1035 (E.D. Cal. 2023), a case from this district, because it does not discuss settlement agreements. (*See* Opp. at 13.) The City *cf.* cites *Walter* for its rule statement that ordinarily relief is limited to named parties and that the exception is representative litigation. (Mot. at 12.) Plaintiffs also complain that the City cites cases when discussing class actions and the jurisdictional limitations that do not contain the word “settlement.” (*Id.* at 13.) As with *Walter*, the City cites those cases to establish, for example, the basic law of class actions and jurisdictional error. (Mot. at 9–15.) Plaintiffs likewise cite cases for their rule statements. (*E.g.*, Opp. at 10–13.) Such citations are appropriate.

1 A judgment is void when there is no “colorable basis” for exercise of jurisdiction. (*Espinosa*, 559
2 U.S. at 271; *Hewitt*, 68 F.4th at 465–67.)

3 *Hoffman v. Pulido*, 928 F.3d 1147 (9th Cir. 2019) is instructive. The Ninth Circuit discussed
4 a United States Magistrate Judge’s dismissal of a prisoner’s prior case after he consented to the
5 judge’s jurisdiction but before defendants had responded or consented. (*Id.* at 1150–51.) The Court
6 recognized that Rule 60(b)(4) allows courts to declare judgments void when issued without
7 jurisdiction. (*Id.*) But it held that, while recent case law clarified magistrate judge jurisdiction
8 required consent of both parties even before a defendant responds, the prisoner had consented. (*Id.*)
9 The dismissal was therefore an error in the scope of jurisdiction rather than an absence of it. (*Id.*)

10 That is not the case here. Unlike circumstances in which a court errs as to the contours of
11 jurisdiction, there is no basis whatsoever for exercise of jurisdiction over the “Homeless Persons”
12 class. (*See, supra*, Part II.B.2.) No certification occurred, let alone analysis of personal jurisdiction
13 or standing, so the Court acquired neither personal jurisdiction over them nor subject-matter
14 jurisdiction over purported claims. (*See id.*) The error is the lack of jurisdiction not the scope of it.
15 The Agreement and Order incorporating it are void and subject to challenge under Rule 60(b)(4)
16 (*Espinosa*, 559 U.S. at 271; *Hoffman*, 928 F.3d at 1150–51; *see also Watts v. Pinckney*, 752 F.2d
17 406, 408–10 (9th Cir. 1985) (judgment void for lack of subject-matter jurisdiction); *Thomas P.*
18 *Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247 (9th Cir. 1980)
19 (judgment void for lack of personal jurisdiction) (subsequent history on other grounds omitted).

20 **C. THE MOTIVATING PURPOSE OF THE AGREEMENT WAS TO SETTLE A LAWSUIT,**
21 **NOT TO BENEFIT AN EXPANDING AND UNLIMITED THIRD-PARTY CLASS.**

22 Plaintiffs argue the City and Plaintiffs voluntarily entered a contractual settlement and that
23 contracting parties can agree to benefit third parties under California law. (Opp. at 14.) Generally,
24 that is correct. (*Goonwardene v. ADP, LLC*, 6 Cal.5th 817, 826–27 (2019).) But whether a contract
25 benefits third parties depends on whether the parties had a “motivating purpose to benefit the third
26 party,” not just knowledge that a benefit to the third party may follow. (*Id.* at 829–30.)

27 California courts recognize a three-part test to determine whether a third party is a
28 beneficiary. (*Id.* at 829–31.) Courts ask “(1) whether the third party would in fact benefit from the

1 contract, (2) whether a motivating purpose of the contracting parties was to provide a benefit to the
 2 third party, and (3) whether permitting a third party to bring its own breach of contract action against
 3 a contracting party is consistent with the objectives of the contract and the reasonable expectations
 4 of the contracting parties.” (*Id.* at 830; *Wexler v. Cal. FAIR Plan Assn.*, 63 Cal.App.5th 55, 65
 5 (2021).) Every element must be satisfied. (*Goonewardene*, 6 Cal.5th at 830.)

6 Plaintiffs contend that there is no basis to set aside the Agreement because Plaintiffs and the
 7 City voluntarily executed it to resolve the lawsuit. (*See Opp.* at 5, 8, 11–15, 21.) In doing so,
 8 Plaintiffs side step the operative question of whether the parties’ “motivating purpose” was to make
 9 an unlimited class of “Homeless Persons” third-party beneficiaries capable of exercising an
 10 independent breach action. (*See Goonewardene*, 6 Cal.5th at 829–31.)

11 The answer is no. ***Plaintiffs concede that the parties’ intent was to settle Plaintiffs’ claims.***
 12 (*See, e.g., Opp.* at 21.) The Agreement announces it too (Agreement ¶ K.) It states, “[f]or the sole
 13 purpose of avoiding protracted litigation, the Parties agree that it is in the Parties’ best interests to
 14 settle the above-referenced Action, including all claims, complaints and any other requests for
 15 judicial relief therein[.]” (*Id.*) It then says, “[t]he City entered into this Agreement solely to avoid
 16 the time, expense, and risk of continued litigation.” (*Id.* ¶ 21.) Recitals in contracts are “conclusively
 17 presumed to be true as between the parties[.]” (Cal. Evid. Code § 622.)

18 Even if the parties knew Homeless Persons would benefit under the Agreement, mere
 19 knowledge that a third party will benefit does not manifest purpose. (*See Goonewardene*, 6 Cal.5th
 20 at 830–31.) If the motivating purpose were to benefit third parties, the Agreement would not have
 21 stated that its sole purpose was to avoid litigation. (*See id.; see also Wexler*, 63 Cal. App. 5th at 65–
 22 66.) Plaintiffs cannot establish the second element. (*Goonewardene*, 6 Cal.5th at 830–31; *Wexler*,
 23 63 Cal. App. 5th at 65–66.)

24 Nor can they establish the third element. The contract’s language and expectations of the
 25 parties do not support third-party breach actions. (*Goonewardene*, 6 Cal.5th at 830.) First, the
 26 Agreement grants Homeless Persons, including through Plaintiffs’ Counsel’s enforcement *for* them,
 27 a dispute resolution process. (Agreement ¶ 16.) Second, the Agreement explicitly excludes third-
 28 party suits for breach. Paragraph 16(f) says, “[n]othing in this Agreement limits the ability of

1 Plaintiffs or other Homeless Persons to seek damages and/or other monetary relief, injunctive relief,
 2 declaratory relief or any other type of relief in other proceedings *not subject to this Agreement.*”
 3 Since a breach is an unjustified failure to fulfill contractual terms, any proceeding for breach of the
 4 Agreement is, by definition, subject to the Agreement. (*See Chen v. PayPal, Inc.*, 61 Cal.App.5th
 5 559, 570 (2021).) Non-party Homeless Persons are not third-party beneficiaries to the Agreement.

6 **D. THE AGREEMENT UNLAWFULLY SURRENDERS THE CITY’S POLICE POWER.**

7 **1. The City’s Challenge to the Agreement’s Abnegation of Its Police Power**
 8 **is a Challenge to the Resulting Void Retention of Jurisdiction.**

9 Plaintiffs distort the City’s challenge to the Agreement’s surrender of its police power as a
 10 challenge to a remedy rather than to jurisdiction. (Opp. at 10–11.) Plaintiffs are wrong again.

11 Plaintiffs argue the City challenges the “final judgment” that “is the Court’s dismissal of the
 12 case through the Settlement” which is “separate” from jurisdiction over the “principal suit.” (Opp.
 13 at 11.) Plaintiffs ignore the City’s express challenge of the Agreement’s retained jurisdiction and
 14 the void incorporation of enforcement jurisdiction into the Final Order. ((Mot. at 11.) (“There was
 15 accordingly no Agreement—and no jurisdiction whatsoever—on which the Court could incorporate
 16 the Agreement into a final order retaining oversight jurisdiction or dismissing the case.”))

17 Plaintiffs puzzlingly cite *Kokkonen*, *Keeling*, and *Delay v. Gordon* as support. But NONE of
 18 those cases stand for the proposition that a challenge to a final judgment incorporating enforcement
 19 power over a settlement is merely a challenge to a remedy. (Opp. at 11.) Just the opposite. *Kokkonen*
 20 dealt with “a claim for breach of a contract,” a term of which was dismissal of a federal case.
 21 (*Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994).) No federal law made that a
 22 basis for federal jurisdiction. (*Id.*) The Supreme Court noted that the facts of breach were separate
 23 from the dismissed federal suit. (*Id.*) It reasoned, however, that the situation would be “quite
 24 different if the parties’ obligation to comply with the terms of the settlement” were part of the
 25 dismissal order or the dismissal incorporated the settlement. (*Id.*) *Keeling* and *Delay* stand for the
 26 similar notion that parties may employ Rule 60 to vacate judgment based on an incorporated
 27 settlement agreement. (*Keeling v. Sheet Metal Workers Int’l Ass’n, Local Union 162*, 937 F.2d 408,
 28 410 (9th Cir. 1991); *Delay v. Gordon*, 475 F.3d 1039, 1044 n.11 (9th Cir. 2007).)

1 It is the illegal nature of the Agreement, and the retention of jurisdiction to enforce it, that
2 the City challenges. That the City can do. (*See Keeling*, 937 F.2d at 410.)

3 2. The Agreement Strips the City of Police Power.

4 Plaintiffs try to argue that the Agreement does not deprive the City of police power. (Opp.
5 at 15–19.) They say the City merely agreed to limit enforcement and “may” enforce anti-camping
6 ordinances if it follows a process. (*Id.*) They say the City has yielded no “control.” (*Id.*)

7 Except it has. Plaintiffs’ oblique presentation of the Agreement as merely limiting police
8 power defies even a casual reading. For example, Plaintiffs say that the City has simply agreed to a
9 pre-enforcement notice and outreach process, after which it is entirely free to exercise its
10 enforcement discretion. (*Id.* at 17–18.) Never mind that the Agreement limits the City’s ability to
11 enforce its ordinances to three properties at a time from among the multitude of public property in
12 the City, regardless of whether other enforcement is warranted. (Agreement ¶ 10(e).) Never mind
13 that the Agreement requires that the City pre-clear enforcement with Plaintiffs’ Counsel who, if they
14 decide there is insufficient shelter space at the only two shelters that can be counted, can embargo
15 enforcement and force a return to court. (*Id.* ¶ 10(c).) Never mind that the “limited” process Plaintiffs
16 refer to requires an onerous multi-week process of 17 days before the City can enforce.² (*Id.* ¶ 10(c),
17 (f), (g).) Never mind that the Agreement requires the City to act as Counsel’s referral service so that
18 Counsel and Homeless Persons may monitor City action. (*Id.* ¶ 10(f).)

19 That is not discretion to exercise police power. Cities cannot contract that authority away
20 voluntarily or otherwise. (*E.g., Avco Cmty. Devs., Inc., v. S. Coast Reg’l Com.*, 17 Cal. 3d at 785,
21 800 (1976); *Discovery Builders, Inc. v. City of Oakland*, 92 Cal.App.5th 799, 810–11 (2023).) Yet
22 the restrictions divest the City of not only the ability to enforce but also of discretion over the *actual*
23 scope and timing of enforcement. For example, the City is hobbled because it can only enforce its
24 ordinances up to three properties at a time even if some danger warrants it. (Agreement ¶ 10(e).)
25 Plaintiffs ignore that by recycling the claim that all the City need do is repeat the notice process.
26 (Opp. at 18.) But repetition of a multi-week process that strips the City of ability to enforce its laws

27 _____
28 ² Plaintiffs misleadingly state that the City must only provide 10-day notice. (Opp. at 17–18.) They exclude
the further seven days’ notice that the City must give Counsel to object to enforcement. (*Id.*)

1 across its multiple properties does nothing to ameliorate the suspension of power. (*E.g.*, *Discovery*
2 *Builders*, 92 Cal.App.5th at 810–11; *County Mobilehome Positive Action Committee, Inc. v. County*
3 *of San Diego*, 62 Cal.App.4th 727, 735–39 (1998).) That is particularly the case when Plaintiffs,
4 Counsel, and any Homeless Person can bring any enforcement to a grinding halt if they decide that
5 space at two shelters is not sufficient to let the City enforce its own laws. (*E.g.*, Agreement ¶¶ 10(c),
6 (f), (g); 16)

7 The City cited those examples in its Motion. They are on their own unlawful surrenders of
8 municipal function. (*E.g.*, *Discovery Builders*, 92 Cal.App.5th at 810–13.) Even so, Plaintiffs
9 complain that those are the only four examples the City cited and that the City, under those
10 examples, has discretion enforce after the notice process. (Opp. at 17–19.) Below are four more.

11 Plaintiffs claim that the City isn’t stymied in enforcement powers that Counsel has no power
12 to halt. That’s not true. If Plaintiffs, Counsel, or any Homeless Person contend the City violated the
13 Agreement, they can initiate dispute resolution and the City is barred from enforcement action,
14 including arrest and citation, regardless of the reasons underlying enforcement. (*Id.* ¶ 16(d).)

15 Plaintiffs claim that the “sufficient” space objection power is limited. Not true either. Only
16 two shelters may be counted for space. (*Id.* ¶ 10(a).) If there are “insufficient” spaces at those shelters
17 for Homeless Persons who will be affected by enforcement, the City is effectively barred from
18 enforcing its anti-camping ordinances. (*Id.* ¶ 10(a)–(c).)

19 Even if there is enough space, if a Homeless Person chooses to decline space during the
20 outreach process, the City cannot cite or arrest Homeless Persons refusing to move from public
21 property for at least three days regardless of the need for enforcement. (*Id.* ¶ 10(l).)

22 And, perhaps most strikingly, the divestments of power apply not just to defined anti-
23 camping ordinances (Agreement ¶ 3(a)) but *any* provision of law that Plaintiffs or their Counsel
24 deem “*analogous*,” the meaning of which is left wholly to opinion. (*Id.*)

25 Those annulments of “municipal and legislative function,” which is at its apex in the
26 regulation of public health and safety, fall squarely within the unlawful abnegations of power cited
27 in the Motion. (Mot. at 16–20; Cal. Const. art. XI, § 7; *Cotta v. City and County of San Francisco*,
28 157 Cal.App.4th 1550, 1557 (2007).) As the City wrote, the crux of the matter is whether the “crucial

1 element of control” has been lost. (*108 Holdings, Ltd. v. City of Rohnert Park*, 136 Cal.App.4th 186,
 2 194–97 (2006); *County Mobilehome*, 62 Cal.App.4th at 738.) Here, it has been. The City’s actual
 3 control of the time, place, and manner of enforcement has been eliminated no matter Plaintiffs’
 4 superficial insistence that the City can use its “discretion” to enforce its ordinances *after* it follows
 5 the multi-week process subject to Counsel’s and Homeless Persons’ veto if they object. (*E.g.*,
 6 Agreement ¶¶ 3(a), 10, 16.) That is even more apparent since not only is the City “limited” in
 7 enforcing specific anti-camping ordinances, but neither can it enforce undefined “analogous” law,
 8 which could be anything from zoning and land use restrictions to basic nuisance laws. (*Id.* ¶ 3(a).)

9 Plaintiffs, in opposition, attempt to point to cases upholding “limitations” on municipal
 10 authority to argue the Agreement as valid. For instance, they cite *108 Holdings, LTD v. City of*
 11 *Rohnert Park*, where a city merely agreed to interpret its general plan in a particular way. (Opp. at
 12 16). And they cite *Santa Margarita Area Residents Together v. San Luis Obispo County*, where
 13 zoning rules were “frozen” on a particular property, but the county retained development review
 14 authority. (*Id.*; *Santa Margarita*, 84 Cal.App.4th 221, 233 (2000).)

15 Far from merely interpretive contracts or agreements in which the locality retained
 16 functional discretion, the surrenders of power here subject the City to private override and near-total
 17 inhibition in enforcement on a Citywide basis. (*E.g.*, Agreement ¶¶ 3(a), 10, 16.) California courts
 18 have repeatedly rejected contracts containing those kinds of surrenders of power, such as agreements
 19 restricting a city’s ability to enforce impact fees, settlements agreeing to refrain from future zoning,
 20 and contracts effectively exempting classes of people from enforcement applicable to everyone else.
 21 (*See* Mot. at 16–20; *Discovery Builders*, 92 Cal.App.5th at 810–14; *Tiburon Open Space Comm. v.*
 22 *County of Marin*, 78 Cal.App.5th 700, 733 (2022) (describing invalid limitations); *Trancas*
 23 *Property Owners Association v. City of Malibu*, 138 Cal.App.4th 172, 180–82 (2006).) The
 24 Agreement’s sheer surrender of City discretion on how and when to enforce—for who knows how
 25 many “analogous” laws—is far more like those cases than the cases involving interpretive
 26 agreements or agreements that do not intrude on public power.

27 Plaintiffs also cite *Tiburon Open Space Comm. v. County of Marin* in which a county settled
 28 a federal case by agreeing to approve several residential units. (*Tiburon*, 78 Cal.App.5th at 718–

730–34.) The Court of Appeal held that agreement valid because it did nothing like exempt an entire class of people from enforcement, agree to refrain from future legislation or enforcement, or subject itself to veto power. (*See id.* at 730–34.) That is exactly the point. The Agreement does those unlawful things here—it exempts Homeless Persons from routine enforcement applicable to others, thwarts future enforcement, and subjects the City to private Citywide veto. (*See id.*) *Tiburon* is of no help to Plaintiffs. Indeed, the Court of Appeal wrote it would be an equally impermissible nullification of police power to yield it up in a settlement in *federal* litigation. (*Id.* at 730–31.)

The Agreement is unlawful. Under California law, it is null. (*Discovery Builders*, 92 Cal.App.5th at 810–11.) Its retention of and extension of jurisdiction over the Homeless Persons class is void too. (*Id.*) The Final Order, with nothing but a void Agreement supporting jurisdiction, is void for jurisdictional error too. (*E.g., Espinosa*, 559 U.S. at 271; *Hewitt*, 68 F.4th at 466–67.)

E. A VOID JUDGMENT IS SUBJECT TO CHALLENGE AT ANY TIME.

Plaintiffs make much of cases like *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657 (1st Cir. 1990) and *R.C. by Alabama Disabilities Advocacy Program v. Nachman*, 969 F. Supp. 682 (M.D. Ala. 1997) to suggest that the City is discontent and untimely to challenge the Agreement and Final Order. (*E.g., Opp.* at 5, 7–9, 11.) The law says otherwise. Unlike motions for relief from judgment under Rule 60(b)(1)–(3), which a party must file within one year of entry, or motions for relief from judgment under to Rule 60(b)(5)–(6), which must be brought within a “reasonable time,” Rule 60(b)(4) motions to set aside judgments as void ***may be filed at any time***. (*Meadows v. Dominican Republic*, 817 F.2d 517, 521 (1987); *In re Center Wholesale, Inc.*, 759 F.2d 1440, 1447–48 (9th Cir. 1985); *Inland Concrete Enters., Inc. v. Kraft*, 318 F.R.D. 383, 410 (C.D. Cal. 2016).) Plaintiffs’ citations say so too. (*Nachman*, 969 F. Supp. at 692.) The Rule 60(b)(4) motion is timely.

F. THE CITY BROUGHT ITS RULE 60(B)(5) MOTION IN A REASONABLE TIME AND ENFORCEMENT IS INEQUITABLE.

Nearly the entirety of Plaintiffs opposition to the City’s Rule 60(b)(5) motion is their superficial assertion that the City did not bring it within a reasonable time. They argue that the City did not appeal and brings its Motion after three years, so the City is untimely. (*Opp.* at 19–20.)

The law does not support them. The cases Plaintiffs cite all involve parties who did not

1 appeal but then sat on their rights doing nothing and who could offer no reason for delay. (*E.g.*,
 2 *Twentieth Century-Fox Film Corp. v. Dunnahoo*, 637 F.2d 1338 (9th Cir. 1981); *Morse-Starrett*
 3 *Prods. Co. v. Steccone*, 205 F.2d 244, 249 (9th Cir. 1953).) That is a far cry from this case. Plaintiffs’
 4 concessions prove the City has not sat inert. (Opp. at 7.) Plaintiffs admit that the parties engaged in
 5 dispute resolution as far back as 2022 and that the City pursued relief. (*Id.*) Plaintiffs fail to note,
 6 though, that the City also attempted to informally resolve issues precipitating this motion and then
 7 sought a dispute resolution conference before Judge Carolyn Delaney. (Mot. at 8 n.1; ECF No. 238,
 8 July 16, 2025, Minutes for In Chambers Conference.) None of the City’s good faith attempts to
 9 reach compromise bore fruit. The City’s action is quite unlike the dilatory parties in *Morse-Starrett*
 10 and *Dunnahoo*. (*Dunnahoo*, 637 F.2d 1338 at 1341.) Even if the City hadn’t been so diligent, the
 11 reasonable time inquiry is flexible and not “unduly strict.” (*Salazar ex rel. Salazar v. D.C.*, 633 F.3d
 12 1110, 1117 (D.C. Cir. 2011); see *United States v. Holtzman*, 762 F.2d 720, 725 (1985).) Moreover,
 13 as Plaintiffs point out, the Court’s jurisdiction under the Agreement does not expire until 2027.
 14 (Opp. at 4.) The City has acted reasonably in moving within the time the Court retained jurisdiction.

15 Plaintiffs’ arguments that nothing warrants relief under 60(b)(5) equally unconvincing.
 16 Continuing their facile representations of the City’s argument, Plaintiffs focus on the City’s citation
 17 of *Rufo v. Inmates of Suffolk County Jail*, stating that the City argues that a “misunderstanding of
 18 the law” is alone sufficient to warrant relief under Rule 60(b)(5). (Opp. at 21.) Plaintiffs are
 19 incorrect. The Motion and *Rufo* say when incorrect applications of law become apparent such as
 20 through changes in intervening law, misunderstandings of law can constitute changed circumstances
 21 warranting relief. (*Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 388–90 (1992); Mot. at 21.)

22 *Rufo* specifically said “[w]hile a decision that clarifies the law will not, *in and of itself*,
 23 provide a basis for modifying a decree, it could constitute a change in circumstances that would
 24 support modification if the parties had based their agreement on a misunderstanding of the
 25 governing law.” (*Id.* at 390.) Here, the parties evidently misunderstood the legality of the extent of
 26 the restrictions placed on the City in assuming they were lawful, which, as California courts have
 27 continued to clarify in intervening years, is not true. (*E.g.*, *Discovery Builders*, 92 Cal.App.5th at
 28 810–13.) For example, *Discovery Builders* clarified that invalid abnegation of police power includes

not just surrender of power to legislate and exercise power in the future but also the abridging of the ability to *enforce* laws. (*Id.*) “[A] city’s authority to make laws would be fictional if not accompanied by the power to enforce or impose those laws.” (*Id.* at 813.) The clarification that what the parties ostensibly believed was legal is unlawful is within the kind of misunderstanding of law constituting changed circumstances for Rule 60(b)(5). (*Rufo*, 502 U.S. at 388–90; *Coleman v. Brown*, 922 F.Supp.2d 1004, 1026 n.24 (E.D. Cal. 2013) (recognizing misunderstanding basis).)

Plaintiffs yet argue that the City identifies no changed circumstances. (Opp. at 21.) The City thus replies that, even if the above were insufficient, the Supreme Court’s emphatic barring of “shortcut” class actions is. (*Casa, Inc.*, 145 S.Ct. at 2555–56.) Particularly in allowing Counsel to haul the City into court on behalf of *anyone* from a universal class of non-party Homeless Persons over whom no jurisdiction was acquired, the Agreement’s class relief falls squarely within the kind of circumvention of Rule 23 the Court foreclosed. (*Id.*) That falls under *Rufo* too.

III. CONCLUSION

For the reasons above and in the Motion, the City respectfully requests that the Court, under Rule 60, relieve it of the final order and Agreement or, alternatively, modify the Agreement to (1) apply only to the named parties, and (2) sever the unlawful abnegations of the City’s police powers.

Dated: September 8, 2025

COLE HUBER LLP

By: /s/ **Ronald J. Scholar**
Ronald J. Scholar

By: /s/ **Tyler J. Sherman**
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Attorneys for Defendants: City of Chico and City
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PROOF OF SERVICE

Bobby Warren, et al. v. City of Chico, et al.
U.S.D.C / Eastern District of California Case No. 2:21-CV-00640-DAD-AC

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Placer, State of California. My business address is 2281 Lava Ridge Court, Suite 300, Roseville, CA 95661.

On September 8, 2025, I served true copies of the following document(s) described as

**DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO MOTION FOR RELIEF
FROM FINAL JUDGMENT OR ORDER PURSUANT TO FRCP RULE 60(B)(4) AND 60(B)(5)**

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BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 8, 2025, at Roseville, California.

/s/ Kirsten Morris

Kirsten Morris