

# EXHIBIT A

LEGAL SERVICES OF NORTHERN CALIFORNIA  
CORY TURNER, SBN # 285235  
E-mail: cturner@lsnc.net  
KATHERINE WARDRIP, SBN # 306387  
E-mail: kwardrip@lsnc.net  
MATTHEW K. BOWEN, SBN # 351171  
E-mail: mbowen@lsnc.net  
541 Normal Avenue  
Chico, CA 95928  
Telephone: (530) 345-9491  
Fax: (530) 345-6913

SARAH J. STEINHEIMER, SBN # 267552  
E-mail: ssteinheimer@lsnc.net  
STEPHEN E. GOLDBERG, SBN # 173499  
E-mail: sgoldberg@lsnc.net  
517 12th Street  
Sacramento, CA 95928  
Telephone: (916) 551-2150  
Fax: (916) 551-2195

WESTERN CENTER ON LAW & POVERTY  
ROBERT D. NEWMAN, SBN # 86534  
Email: rnewman@wclp.org  
RICHARD ROTHSCCHILD, SBN # 67356  
Email: rrothschild@wclp.org  
3701 Wilshire Blvd., Suite 208  
Los Angeles, CA 90010  
Telephone: (213) 487-7211  
Fax: (213) 487-0242

Attorneys for Plaintiffs

**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,

v.

**CITY OF CHICO; CITY OF CHICO  
POLICE DEPARTMENT,**

Defendants.

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

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

**Hearing on Motion:**

Date: October 6, 2025

Time: 1:30 p.m.

Courtroom: 4 / 15th Floor

Judge: Hon. Dale A. Drozd

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## I. INTRODUCTION

Defendants, for the first time, claim that the Settlement they negotiated, jointly drafted, and voluntarily entered into more than three-and-one-half years ago, was void in the first place. They bring this motion seeking relief from the Settlement pursuant to Federal Rules of Civil Procedure 60(b) less than one year after filing their first Rule 60(b) motion in which they sought to be relieved from the Settlement per Rules 60(b)(5) and (6). This Court denied Defendants' first Rule 60(b) motion on March 31, 2025. Undeterred, Defendants retained new counsel and are now trying again. This time, they introduce a new argument, which they could have but did not raise in their first motion, and assert the Settlement is void for two reasons. First, because a class was not certified and the Settlement was not approved under Federal Rule of Civil Procedure 23. They make this argument even though Plaintiffs' lawsuit has never been a class action and no person, other than Plaintiffs and Defendants, are bound by the Settlement. Second, Defendants erroneously assert that the Settlement, to which they agreed, prevents them from enforcing local ordinances creating an unlawful limitation on their local police power. Contrary to the Defendants' claims, the Settlement explicitly allows Defendants to enforce their anti-camping ordinances and led to the dissolution of the Preliminary Injunction that previously enjoined them from enforcing multiple ordinances throughout the entire City. Defendants ask to be relieved from the Settlement per Rule 60(b)(4) and also revive their claim from the first Rule 60(b)(5) that continued enforcement of the Settlement is inequitable.

The Settlement is not void, and continued enforcement of the five year agreement that ends in January 2027 is not inequitable. Defendants regret entering this Settlement, but regret does not make a Settlement void or inequitable. Plaintiffs Bobby Warren, Michael Samuelson, Tracy Miller, Tona Peterson, Carol Beth Thompson, and Christa Stevens<sup>1</sup> oppose Defendants' motion and respectfully request that this Court deny their motion.

## II. PROCEDURAL HISTORY

Defendants bring this motion more than four years after Plaintiffs initiated this action on April 8, 2021. (Complaint, ECF No. 1), Plaintiffs filed their First Amended Complaint ("AC") on April 11, 2021 (AC, ECF No. 34). On April 11, 2021, the Court granted Plaintiffs' request for a Temporary Restraining

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<sup>1</sup> Plaintiffs Jonathon Williams and Andy Lambach both passed away after the Settlement was entered.

1 Order (“TRO”) enjoining Defendants from enforcing their anti-camping ordinances on public property  
2 until the court’s resolution of Plaintiffs’ Preliminary Injunction motion. TRO at 2:10-3:12, ECF No. 37.  
3 The court set the hearing on the Preliminary Injunction motion on April 23, 2021. Order to Show Cause  
4 Regarding Prelim. Inj. at 2:22-23, ECF No. 38. After the April 23 hearing, the court continued the  
5 hearing and extended the TRO until May 14, 2021. Minute Order, ECF No. 71. The parties then agreed  
6 to extend the TRO and continued the hearing on the Preliminary Injunction motion three times, with the  
7 hearing ultimately being set on July 2, 2021. ECF Nos. 78, 80, 83, 84, 87, 88. At the July 2, 2021  
8 hearing, the parties agreed to have the case referred to a magistrate judge for a settlement conference.  
9 Minute Orders, ECF Nos. 102, 103.

10 On July 8, 2021, the court granted Plaintiffs’ motion and converted the terms of the TRO to a  
11 preliminary injunction. Prelim. Inj. Order at 7:3-7, ECF No. 110. The preliminary injunction enjoined  
12 Defendants from enforcing multiple local ordinances, including their anti-camping ordinances and their  
13 personal property ordinance, and from destroying property of unhoused persons. TRO at 2:10-3:12, ECF  
14 No. 37; Prelim. Inj. Order at 7:3-7, ECF No. 110. The Preliminary Injunction was not limited to  
15 Plaintiffs. *Id.* Defendants did not appeal this order. Defendants answered the First Amended Complaint  
16 on June 9, 2021. Defs.’ Answer to Pls.’ FAC, ECF No. 86. Defendants also engaged in prolonged  
17 settlement discussions, including attending seven settlement conferences overseen by the Court from  
18 August 30 to December 29, 2021. Settl. at 2:26-28, ECF No. 153-1. Defendants’ counsel attend each of  
19 the settlement conferences.

20 On January 13, 2022, the parties reached a final settlement to be in effect for five years and  
21 stipulated to a joint dismissal of the action conditioned on the court retaining jurisdiction over the  
22 settlement agreement for that five-year period. Joint Notice of Lodging of [Proposed] Order re: Settl.,  
23 Dismissal, and Continuing Jurisdiction, ECF No. 150. On January 14, 2022, the then-assigned district  
24 judge dissolved the preliminary injunction which had been in effect, dismissed this action, and retained  
25 jurisdiction to enforce the parties’ Settlement Agreement for a period of five years. Stipulated Order Re:  
26 Settl., Dismissal and Continuing Jurisdiction (“Stip. Order”) at 3:23-4:12, ECF No. 153. The Court  
27 incorporated the terms of the Settlement Agreement into the court’s dismissal order. *Id.* at 3:26-28.

28 //

The parties have subsequently sought the assistance from the court in resolving disputes pertaining to the Settlement on multiple occasions as allowed by the dispute process in the Settlement. See Paragraph 16 of Settle. at 21:23-23:18. One such dispute went to a hearing, and the magistrate judge issued an order on April 29, 2022. Dispute Resolution Order, ECF No. 169. Defendants did not appeal that order.

On August 21, 2024, Defendants filed a motion for relief from the settlement agreement pursuant to Federal Rule of Civil Procedure 60(b)(5) and (6). 60(b) Mot., ECF No. 209. On March 31, 2025, the Court denied Defendants' motion. *Warren v. City of Chico*, No. 2:21-CV-00640-DAD-DMC, 2025 WL 974068 (E.D. Cal. Mar. 31, 2025); ECF No. 226. Defendants did not appeal this order. Three months later Defendants retained new counsel for this case. See EFF. Nos. 227, 229-234.

On August 14, 2025, with just 16 months remaining in the Settlement term, Defendants' new counsel filed their second Rule 60(b) motion. Defs.' Notice of Motion and Motion for Relief from a Judgment or Order Pursuant to FRCP Rule 60(b)(4) and 60(b)(5) ("Mot."), ECF No. 239.

Defendants, for the first time, claim that the Settlement they negotiated, jointly drafted, and voluntarily entered into, was void in the first place.

### **III. ARGUMENT**

#### **A. Defendants Present No Viable Grounds for Relief from the Settlement Pursuant to Rule 60(b)(4).**

"[A] motion under Rule 60(b)(4) is not a substitute for a timely appeal." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010) (citations omitted). Similarly, when a party makes "a conscious and informed choice to settle rather than require [the Plaintiff] to establish at trial each factual and legal element of the case, a Rule 60(b) cannot be used to relieve a "litigant from improvident strategic choices." *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 662 (1st Cir. 1990) (citations omitted) (Affirming the district court's denial of a Rule 60(b)(4) motion on multiple grounds.); *see also* *R.C. ex rel. Ala. Disabilities Advoc. Program v. Nachman*, 969 F. Supp. 682, 689 (M.D. Ala. 1997) (In denying Defendant's Rule 60(b)(4) motion, the court noted that the Defendant did "not come to court unsullied" when it make "a calculated decision" to settle the case, received the benefit of the agreement, and waited over five years to request the court to vacate the consent decree when Defendant could have

1 raised its challenge to the decree at any time.) As in *Nachman*, the Defendants here seek to be relieved  
 2 several years into a voluntary settlement agreement based on arguments that were available to it from  
 3 the outset. Defendants made a decision to settle this case, negotiated and jointly drafted the Settlement,  
 4 and received the benefit, which was the dissolution of a Preliminary Injunction that prohibited them  
 5 from enforcing any of its anti-camping ordinances, thereby allowing Defendants to resume enforcement  
 6 of its local ordinances. Then, more than three and half years after settling, Defendants move for relief  
 7 claiming for the first time that the Settlement was void from the start.

8 Relief under Rule 60(b)(4) applies “‘only in the rare instance where a judgment is premised  
 9 either [1] on a certain type of jurisdictional error or [2] on a violation of due process that deprives a  
 10 party of notice or the opportunity to be heard.’” *Fed. Trade Comm’n v. Hewitt*, 68 F.4th 461, 465 (9th  
 11 Cir. 2023) (quoting *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010)). In  
 12 summarizing the extensive case law on Rule 60(b)(4), Wright & Miller, write “[A judgment] is void  
 13 only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted  
 14 in a manner inconsistent with due process of law. . . if the court finds that there was subject-matter or  
 15 personal jurisdiction, or that no due-process violation has occurred the motion will be denied.” 11  
 16 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2862 (3d ed. 2025).

17 A judgment is not void under Rule 60(b)(4) “‘simply because it is or may have been erroneous.’”  
 18 *Espinosa*, 559 U.S. at 270 (citations omitted). A challenge to a court’s authority to impose certain  
 19 remedies is not a challenge to the court’s subject-matter jurisdiction or personal jurisdiction that would  
 20 warrant relief under Rule 60(b)(4). *Hewitt*, 68 F.4th at 465.

21 Further, because the scope of what constitutes a “void” judgment is “narrowly circumscribed,” a  
 22 judgment is void “only where the assertion of jurisdiction is truly unsupported” —and a “void judgment  
 23 must lack even a colorable basis.” *Hewitt*, 68 F.4th at 466 (quoting *Hoffmann v. Pulido*, 928 F.3d 1147,  
 24 1151 (9th Cir. 2019); see *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 612 (9th Cir. 2016) (“A  
 25 judgment is only void where there is a total want of jurisdiction as opposed to an error in the exercise of  
 26 jurisdiction.”)

27 Here, there is no dispute that the Court had subject matter jurisdiction or personal jurisdiction  
 28 over Plaintiffs and Defendants. There is also no allegation that Plaintiffs or Defendants were denied due

1 process. Rather, Defendants argue that the Settlement and Order Retaining Jurisdiction over the  
2 Settlement were void at the onset because the Settlement “creates” class-relief and as such the class  
3 needed to be certified and the settlement approved under Federal Rule of Civil Procedure 23; and that  
4 the Settlement unlawfully surrenders Defendants’ police power. Mot. at 8:9-20, ECF No. 239.

5 Both of Defendants’ arguments fail in substance. However, even if Defendants’ arguments were  
6 correct, they are not grounds for relief under Rule 60(b)(4) because Defendants are challenging the  
7 remedies provided for in the Settlement and the Court’s retention of jurisdiction over the Settlement.  
8 Mot. at 12:18-14:25, 17:26-18:3, ECF No. 239. Further, Defendants cannot meet the stringent test that  
9 court’s jurisdiction lacks “even a colorable basis.” *Hewitt*, 68 F.4th at 466.

10 In *Espinosa*, a creditor filed a Rule 60(b)(4) and (6) motion seeking relief from a 7 year old  
11 bankruptcy judgment discharging student loan debt, arguing that the judgment was void because it was  
12 inconsistent with the laws governing Bankruptcy proceedings that required a court to find undue  
13 hardship in an adversary proceeding before discharging student debt where the court held no such  
14 hearing and made no such finding. *Espinosa*, 559 U.S. at 271. The District Court granted the creditor’s  
15 motion on other grounds, but the Supreme Court affirmed the Ninth Circuit’s holding on appeal that by  
16 approving the discharge plan without first finding undue hardship in an adversary proceeding, the  
17 Bankruptcy Court at most committed a legal error that the creditor “might have successfully appealed”  
18 but this error was not the basis for voiding the judgment under Rule 60(b). *Id.* at 267-268. Thus, the  
19 Supreme Court held that the Bankruptcy Court’s failure to follow the code and rules of procedure was  
20 not a jurisdictional issue. *Id.* at 272.

21 In *Hewitt*, the Ninth Circuit upheld a district court’s denial of a Rule 60(b)(4) motion for relief  
22 from a judgment awarding monetary damages because there was an “arguable basis” for such a  
23 monetary award at the time the judgment was entered even though the law had changed at the time of  
24 the Rule 60(b)(4) motion and it was now “undisputed” that the remedy is not authorized. *Hewitt*, 68  
25 F.4th 461, 465 (9th Cir. 2023).

26 The Ninth Circuit also found that the debtor’s Rule 60(b)(4) motion was not challenging the  
27 court’s subject matter or personal jurisdiction, but rather the court’s authority to impose certain remedies  
28 and this was not type of jurisdictional error that warranted relief under Rule 60(b)(4). *Id.* at 465.

**1. The Stipulation and Settlement Agreement are Not Void Because Federal Rule of Civil Procedure 23 is Not a Jurisdictional Issue.**

Neither of Defendants' arguments have merit regarding the jurisdiction of the court to enter the Stipulated Order merit relief under Rule 60(b)(4) because they are arguments about alleged procedural errors and the type of relief sought. First, Defendants contend the Settlement Agreement is void pursuant to Rule 60(b)(4) due to lack of personal jurisdiction, because the Settlement Agreement wrongfully benefits "Homeless Persons" when it is not a class action and did not comply with the class certification procedures in Rule 23. Mot. at 9-14, ECF No. 239. However, Defendants' Rule 23 argument is procedural, not jurisdictional, and therefore it is not grounds for voidness pursuant to Rule 60(b)(4). *Espinosa*, 559 U.S. at 270; *see also Harris v. Palm Springs Alpine Ests., Inc.*, 329 F.2d 909, 912-13 (9th Cir. 1964) ("Rule 23 is a rule of procedure, not a limitation upon jurisdiction. Where a statute confers jurisdiction upon United States district courts over particular actions without regard to the amount in controversy or the citizenship of the parties, as in the present cases [citations omitted], it is irrelevant to the district court's jurisdiction whether complaints in such actions successfully plead class suits.); *see also Pioche Mines Consol., Inc. v. Dolman*, 333 F.2d 257, 265 (9th Cir. 1964). Because alleging non-compliance with Rule 23 does not affect the Court's jurisdiction, it is not grounds for a motion for relief pursuant to Rule 60(b)(4).

This argument also fails under *Hewitt*, because Defendants' concerns are about the invalidity of certain terms of the Settlement, which is an argument about the form of relief or remedy provided in a judgment reached by a court, not about the jurisdiction of that court. *Hewitt*, 68 F.4th 461, 466 (9th Cir. 2023).

**2. The Stipulation and Settlement Agreement are Not Void Because the Question of Whether the Terms of the Settlement Agreement are Lawful Is Not a Jurisdictional Issue.**

Defendants' argument that they unlawfully surrendered their police powers in the Settlement also fails to provide them relief under *Hewitt*, because the argument does not challenge the court's subject-matter or personal jurisdiction over the case; instead, Defendants challenge the court's authority to impose certain remedies and the procedure by which the Court retained jurisdiction. Mot. at 17:26-18:3,

ECF No. 239. Defendants attempt to draw this argument as a jurisdictional issue by contending that the Court lacks jurisdiction because the Court only retains jurisdiction over the case through the Stipulated Order and Settlement Agreement and the Settlement Agreement is void. *Id.* at 17:26-18:3, ECF No. 239. The final judgment challenged by Defendants, however, is the Court’s dismissal of the case through the Settlement. *Keeling v. Sheet Metal Workers Int’l Ass’n, Local Union 162*, 937 F.2d 408, 410 (9th Cir. 1991); *see also Delay v. Gordon*, 475 F.3d 1039, 1044 n.11 (9th Cir. 2007). The jurisdiction of a court to enforce a Settlement Agreement through a *Kokkonen* reservation is “quite separate” from the Court’s jurisdiction to determine the issues in the principal suit, whether by decree or voluntary dismissal. *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 381 (1994). Further, the Court’s jurisdiction to enforce the settlement, while not at issue under Rule 60(b)(4), is the very jurisdiction Defendants seek to avail themselves of in filing their motion and that jurisdiction is secured under the terms of the Stipulated Order as authorized by *Kokkonen*. Stip. Order at 4:1-8, ECF No. 153; *Kokkonen*, 511 U.S. at 381. Defendants provide no support for their contention that the unenforceability of certain terms of the underlying Settlement Agreement would divest the Court of its jurisdiction to either enter a voluntary dismissal or enforce the Settlement Agreement. *Id.* at 17:26-18:3, ECF No. 239; *Hewitt and Espinosa* do not support such a contention. *See Hewitt*, 68 F.4th at 465-466; *Espinosa*, 559 U.S. at 271; *Discovery Builders Inc. v. City of Oakland*, 92 Cal. App. 5th 799, 810-811 (2023).

### 3. Rule 60(b)(4) Does Not Provide An Avenue for Relief From Strategic Decisions that Defendants Now Regret.

While Defendants are not entitled to relief from the Settlement and Order pursuant to *Hewitt* and *Espinosa*, an even higher standard should apply here where Defendants seek relief from a voluntary settlement that they negotiated over the course of four months and through seven court overseen settlement conferences. Settl. at 2:26-28, ECF No. 153-1. “Rule 60(b)(4) cannot be used to relieve a litigant from improvident strategic choices.” *Boch Oldsmobile, Inc.*, 909 F.2d at 662. The Stipulated Order and Settlement are not void and Defendants cannot be relieved of their voluntarily agreed-to obligations under the Settlement Agreement under Rule 60(b)(4) simply because they regret their decision.

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**B. Federal Rule of Civil Procedure 23 Does Not Apply to This Case and Defendants' Argument that the Settlement is Void Because a Class Was Not Certified is Without Merit.**

**1. Rule 23 Has No Bearing on this Case, Because It Was Not Pled as a Class Action and the Settlement Does Not Bind Anyone Other Than the Parties.**

Despite Defendants' prolific citations to class action cases, they fail to acknowledge that Federal Rule of Civil Procedure 23 **allows, but does not require**, a plaintiff to sue as a representative party, if it meets the conditions of and follows the processes of the rule. Fed. R. Civ. P. 23. If a plaintiff chooses to sue as a representative party, Rule 23 must be followed “because class judgments bind absentees with respect to their individual claims for relief and are preclusive as to all claims the class could have brought...” *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 654 (2022).

Here, Plaintiffs did not sue as a representative party. *See* Complaint, ECF No. 1; First Amended Complaint, ECF No. 34. Failure to obtain class certification is irrelevant to a case that is not a class action and none of Defendants' citations to class action cases apply here. *See* Mot. at 9:24-11:16, ECF No. 239.

Further, there was no need to follow the class certification process because the Settlement does not bind any non-party. The Settlement was “made and entered into by and between Plaintiffs Bobby Warren, Andy Lambach, Jonathon Williams, Michael Samuelson, Tracy Miller, Tona Peterson, Carol Beth Thompson, and Christa Stevens . . . and Defendants . . .” Settlement at 1:3-7, ECF No. 153-1. Only Plaintiffs and Defendants released claims. Settlement at 23:12-26:26, ECF No. 153-1. While a “Homeless Person” who is not one of the plaintiffs may utilize the dispute resolution process available through the Settlement if they allege Defendants' enforcement of their Anti-Camping ordinance violates the process Defendants agreed to in the Settlement, a non-party “Homeless Person” is not required to use the Settlement's dispute resolution process. *See* Settlement at 21:23-23:20, ECF No. 153-1. Nothing in the Settlement prevents any person besides the eight Plaintiffs from suing Defendants on any claim whatsoever, even including the constitutional claims that were resolved between Plaintiffs and Defendants.

//

Defendants wrongfully contend the Settlement Agreement “turns the case into a representative lawsuit and by necessity affords class-based relief” and that the case had to be a class action for the Settlement Agreement to benefit non-plaintiff third parties. Mot. at 12:1-6, ECFR No. 239 (*citing Walter v. Leprino Foods Co.*, 670 F.Supp.3d 1035, 1045–47 (E.D. Cal. 2023).) Defendants only cite *Walter* to support this contention, but *Walter* does not discuss this issue at all. *Walter*, 670 F.Supp.3d at 1045–47. The plaintiffs in *Walter* filed a class action, sought class certification, and the Court partially granted certification. *Id.* *Walter* does not discuss settlement agreements at all, let alone what turns a settlement agreement into a “representative lawsuit” with “class-based relief.” *Id.*

In the six pages of Section III.A. of their brief, Defendants repeatedly argue that relief in the Settlement Agreement must only benefit Plaintiffs because the case was not a class action. Mot. at 9:20-14:25, ECF No. 239. However, none of the 34 case citations provide any support for this sweeping and erroneous assertion. *Id.* Twenty-seven (27) of the 34 cases do not even have the word “settlement” in them. *Id.*

Defendants also argue that the Settlement is void because Homeless Persons who receive a benefit under the Settlement had to receive notice of the Settlement and the Settlement had to be approved by the Court pursuant to Federal Rule of Civil of Procedure 23(e). Mot. at 11:8-16; 12:7-15, ECF No 239. However, Defendants ignore that notice of a proposed settlement only needs to be made to class members “who would be bound” and approval of a settlement by the court is only required when the settlement “would bind class members.” Fed. R. Civ. P. 23(e)(1)-(2). Again, the Settlement did not need to follow this process since no person other than Plaintiffs and Defendants are bound by it.

## **2. Defendants Ignore that the Order They Seek Relief from is a Voluntary Settlement Agreement.**

Defendants begin their argument with the assertion that “[w]ith few exceptions, relief in a lawsuit is near-universally limited to named parties.” Mot. at 9:24-25, ECF No. 239. However, this statement is inapposite to Defendants’ argument here as this statement and the cases they cite refer to relief that is available from a court judgment. In this case, the parties voluntarily entered into a settlement. None of the cases cited by Defendants state or even stand for the proposition that parties cannot agree to the type of settlement Plaintiffs and Defendants agreed to.

1 To the extent that Defendants are asserting settlement terms are limited to the remedies available  
 2 to the parties through litigation, it is well established that parties are able to agree in settlement to terms  
 3 beyond what is available in litigation. *Sweet v. Cardona*, 641 F. Supp. 3d 814, 827 (N.D. Cal. 2022)  
 4 (“The Supreme Court has made clear, however, that “a federal court is not necessarily barred from  
 5 entering a consent decree merely because the decree provides broader relief than the court could have  
 6 awarded after a trial. This statement applies with equal force to settlements.” (citations omitted).

7 Defendants’ argument that the entire Settlement is void because Homeless Persons in Chico who  
 8 are not Plaintiffs receive a benefit under the Settlement also ignores that under California law, a contract  
 9 can be made for the express benefit of a third person, who is not a party to the contract. Cal. Civ. Code §  
 10 1559. Settlement agreements in federal courts in California are contracts governed by state law and may  
 11 have third-party beneficiaries. *In re Bennett*, 298 F.3d 1059, 1071 (9th Cir. 2002) (Non-signatories that  
 12 filed unsuccessful action to enforce a settlement agreement will be liable under the agreement’s  
 13 attorney’s fees provision if they are found to be third-party beneficiaries); *Vaughn v. Teran*, No. 1:17-  
 14 CV-00966-HBK, 2024 WL 3395824, \*9 (E.D. Cal. July 12, 2024) (Attorney for one of the Parties in the  
 15 settlement agreement was an intended third-party beneficiary of the agreement.) A defined group of  
 16 people may be third-party beneficiaries to an agreement. *E.g. Goonewardene v. ADP, LLC*, 6 Cal.5th  
 17 817, 830-34 (2019) (Employees would be third-party beneficiaries of the contract between the employer  
 18 and a payroll service provider if: (1) they benefited from the contract, (2) those benefit(s) were a  
 19 motivating purpose of the contract; and (3) employees enforcing the contract is consistent with the  
 20 contracting parties’ objectives and reasonable expectations.)

21 Further, while the scope of relief available in this action had the case been decided by court  
 22 judgment, and not settlement, is not the issue before the Court in this motion, we note that Defendants  
 23 cite at least one case that recognizes courts have held that injunctions enjoining law enforcement  
 24 policies or practices as to both parties and non-parties may be appropriate. See Mot. at 10:1-2, ECF No.  
 25 239 citing *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501 (9th Cir. 1996). Even if  
 26 Defendants were correct that the terms of a voluntary settlement agreement cannot exceed the relief  
 27 available in the litigation or benefit third party beneficiaries, their Rule 60(b)(4) motion fails because  
 28 under *Easyriders* there is an “arguable basis” that injunctive relief, which is the relief Plaintiffs attained

1 in the early stages of this case, can apply to both Plaintiffs and other Homeless Persons subject to the  
 2 laws enjoyed in the TRO and Preliminary Injunction<sup>2</sup>. See *Hewitt*, 68 F.4th at 465.

### 3                   **3. Failure to Follow Rule 23 Does Not Make the Settlement Void.**

4           Even if Defendants were correct that the Settlement affords class-wide relief and this required  
 5 Plaintiffs to follow the class certification and the settlement approval process in Federal Rule of Civil  
 6 Procedure 23, Defendants are not entitled to relief under Rule 60(b)(4) because failure to follow these  
 7 procedural rules is not the sort of error that makes a judgment void pursuant to Rule 60(b)(4). *Espinosa*,  
 8 559 U.S. at 271. See also *Nachman*, 969 F. Supp. at 703 (finding that even if some members of the  
 9 plaintiff class lacked standing, the consent decree was not void for want of jurisdiction pursuant to Rule  
 10 60(b)(4) where Defendant voluntarily agreed to the terms of the consent decree instead of requiring  
 11 Plaintiffs to prove standing at a trial.)

12           Defendants' objection to the terms of Settlement that benefit Homeless Persons other than  
 13 Plaintiffs is really about the imposition of a certain remedy and is not a challenge to personal or subject-  
 14 matter jurisdiction. *Hewitt*, 68 F.4th at 466.

### 15                   **C. Defendants Did Not Surrender Their Police Power by Voluntarily Agreeing to the** 16                   **Terms of the Settlement.**

17           A governmental entity does not unlawfully contract away its police power unless the contract  
 18 amounts to the "surrender" or "abnegation" "of its *control* of a properly governmental function.  
 19 *Morrison Homes Corp. v. City of Pleasanton*, 58 Cal.App.3d 724, 734 (1976) (citations omitted).

20           In the instant case, Defendant entered into the Settlement which explicitly provides that they may  
 21 enforce their Anti-Camping Ordinances. Settl. at 11-3-4, ECF No. 153-1. The Settlement does not  
 22 dictate the terms of any such ordinances. See ECF No. 153-1. Through the Settlement, Defendants did  
 23 agree to implement a process to provide notice and offers of shelter to Homeless Persons staying on  
 24 public property and subject to arrest for violating the City's Anti-Camping Ordinances. See paragraph  
 25 10 of Settl. at 11:5- 16:11, ECF No. 153-1. This pre-enforcement process to offer notice and shelter, is  
 26 not a surrender of Defendants' local police power.

27  
 28 <sup>2</sup> Notably, Defendants did not appeal the Preliminary Injunction or object to it applying to Homeless Persons who were not parties in the two briefs it submitted in opposition. ECF Nos. 57, 90.

Multiple courts have found contracts, including settlement agreements, that limit but do not eliminate the local government's discretion, are enforceable, and do not amount to a surrender of the local government's police power. In *108 Holdings, LTD v. City of Rohnert Park*, the court found a Stipulated Judgment that required the city to interpret its general plan, including zoning and land use designations, and certain policies on groundwater, community design, and traffic in a manner specified in a judgment did not amount to a surrender of local police power. 136 Cal.App.4th 186 (2006). In *Tiburon Open Space Comm. v. County of Marin* the court found the county did not abdicate its police power by complying with a stipulated federal court judgment in which county agreed to approve specific minimum number of residential units on applicant's property. 78 Cal. App. 5th 700, 730-34 (2022). The court in *Morrison Homes Corporation v. City of Pleasanton* held that agreements between a developer and the city for annexation of land and sewer services were a permissible limitation on the city's police power because the city did not relinquish control of its power to annex or manage sewers. 58 Cal. App. 3d 724 (1976). In *Santa Margarita Area Residents Together v. San Luis Obispo County*, a development agreement between the City and an owner of a 13,800 acre parcel of land that freezes the zoning on the land for five years in return for the developer's commitment to submit a plan to develop the site did not amount to a surrender of the City's police power. 84 Cal. App. 4th 221, 225-26, 232 (2000). Finally, the court in *Stephens v City of Vista* found a settlement that required a City to zone a parcel of land at a certain density so that the owner could build an apartment complex did not amount to a surrender of the City's police power. 994 F.2d 650 (9th Cir 1993).

Defendants rely on a number of other land-use cases to support their argument that the Settlement that they negotiated, drafted and agreed to is an unenforceable abnegation of police power. Mot. at 16:22-17:23, 20:1-6, ECF. No. 239. None are on point. All concern a city's actions in exempting a party from application of local laws. In *Avco Cmty. Devs, Inc. v. South Coast Regional Comm'n*, the commission could not enter an agreement with a land developer that prevented zoning laws from ever applying to the parcel subject to their agreement. 17 Cal. 3d 785, 800 (1976). In *Discovery Builders Inc. v. City of Oakland*, the plaintiffs contracted with the City, agreeing that the fees they paid represented "all of the Developer's obligations for fees due to the City for the Project." 92 Cal. App. 5th at 803. The court held that this was an impermissible abnegation of the city's police power because it restricted them

1 from assessing any impact fees that they later passed. *Id.* The court in *Trancas Property Owners*  
 2 *Association v. City of Malibu* found the city is prohibited from agreeing not to enact ordinances that  
 3 would interfere with a proposed development. 138 Cal. App. 4th 172, 182-83 (2006). In *County*  
 4 *Mobilehome Positive Action Comm., Inc. v. County of San Diego*, the county impermissibly bargained  
 5 away its police power by agreeing not to pass any rent control ordinances against mobile home parks  
 6 subject to the agreement for 15 years, when the county could still pass an ordinance to apply to other  
 7 mobile home parks. 62 Cal. App. 4th 727, 738-741 (1998). Lastly, in *Summit Media LLC v. City of Los*  
 8 *Angeles*, the court reasoned the settlement in that case was unenforceable because it exempted the  
 9 parties to a settlement from complying with ten separate city laws. 211 Cal. App. 4th 921 (2012).

10 Unlike *Summit Media* and the other cases Defendants rely on, in this case, Defendants did not  
 11 agree to exempt Plaintiffs or other “Homeless Persons” from the enforcement of certain laws, or to  
 12 refrain from passing any ordinance that would apply to Plaintiffs. Rather, Defendants can and do enforce  
 13 its Anti-Camping Ordinances and have agreed to a pre-enforcement process that ensures any person  
 14 subject to arrest first gets notice and offer of shelter. Settl. at 11:5-16:11, ECF No. 153-1.

15 Defendants provide four examples of provisions of the Settlement they say are a surrender of  
 16 their police powers. Mot. at 18:4-20, ECF No. 239. Defendants' first claim is that per Paragraph 10(c) of  
 17 the Settlement they are “completely forbidden” from enforcing their anti-camping or . . . analogous laws  
 18 if Plaintiffs’ Counsel “in any way disputes compliance with the Agreement.” *Id.* at 18: 8-12. This  
 19 summary mischaracterizes Paragraph 10(c) of the Settlement, which only requires a stay in enforcement  
 20 if Plaintiffs dispute that there are sufficient open Pallet Shelters and beds for Defendants to begin the  
 21 planned enforcement and if Plaintiffs’ counsel initiate dispute resolution. Settl. at 12:10:27, ECF No.  
 22 153-1. This is then followed by a judicial determination of whether the proposed action violates the  
 23 Settlement if the parties cannot first resolve it on their own. *Id.* at 12:23-27. Defendants still have  
 24 discretion in identifying the people and properties to enforce against and Plaintiffs have no ability to  
 25 object to or prevent Defendants from enforcing their ordinances against Homeless Persons in those areas  
 26 if the settlement procedures are followed. Plaintiffs have only a single basis to object and that does not  
 27 amount to a surrender of Defendants’ police powers.

28 Second, Defendants say they have surrendered their police power by agreeing to give a 10-day

1 notice to any Homeless Person prior to enforcement pursuant to Paragraph 10(f). Mot. at 18:12-14, ECF  
2 No. 239. Defendants have not abnegated their police power by implementing a policy that provides  
3 advance notice to Homeless Persons prior to the enforcement and citation. Defendants still have control  
4 to enforce their ordinances.

5 Third, Defendants assert that they surrendered their police powers by agreeing to limit  
6 enforcement of the Anti-Camping Ordinances against Homeless Persons at three public properties at a  
7 time and by agreeing to identify three public properties where Defendants will not enforce against  
8 people for whom there is no appropriate shelter space in paragraph 10(m) of the Settlement. Mot. at  
9 18:14-17, ECF No. 239. Again, Defendants may enforce their ordinances subject to a pre-enforcement  
10 notice and referral to shelter policy. Defendants retain their ability to select where and against whom to  
11 enforce their ordinances and to manage the alternate site they selected according to their own rules.  
12 Defendants have the power to reasonably regulate the sites. Order after Informal Conference at 1:28-2:1,  
13 ECF No. 191. Defendants retain broad discretion under the Settlement to enforce their ordinances  
14 according to their own priorities for public welfare.

15 Finally, Defendants assert that they have surrendered their police power because they agreed to  
16 include Plaintiffs' counsel's contact information on notices to Homeless Persons, which Defendants  
17 characterizes as "act[ing] as a referral service." Mot. at 18:17-20, ECF No. 239. Including a phone  
18 number on notices bears no relation to Defendants' ability to govern or regulate the health, safety, and  
19 welfare of the community. Unsurprisingly, Defendants provide no argument or explanation for its  
20 assertion that doing so constitutes a surrender of their police power.

21 Without citing to any section of the Settlement, Defendants also erroneously assert they "cannot  
22 enforce any anti-camping ordinance absent agreement by Plaintiffs . . . and [a]ny disagreement means  
23 that Plaintiffs can freeze enforcement altogether. Mot. at 18:27-19:4, ECF. No. 239. This is not correct.  
24 As already discussed, at the start of a planned enforcement the Settlement allows Plaintiffs' counsel to  
25 object on one basis, which is whether there are enough available shelter spaces for the number of people  
26 Defendants plan to enforce against. Settl. at 12:23-27, ECF No. 153-1. If Plaintiffs' counsel object, they  
27 must initiate the agreed upon Dispute Resolution Process. *Id.*; See also Paragraph 16 of the Settl. at  
28 21:23-23:20. While the Dispute Process allows disputes to be brought other than the objection pursuant

1 to Paragraph 10(c), there is no stay on all enforcement when a different dispute is brought. *See* Settl. at  
 2 21:23-23:20, ECF. No. 153-1. If one of the Plaintiffs or another Homeless Person brings a dispute about  
 3 the enforcement of the ordinances as to themselves, Defendants agreed that it would not cite or arrest  
 4 them until the dispute was resolved. Settl. at 22:19-25, ECF. No. 153-1. Again, this does not stay all  
 5 enforcement subject to Plaintiffs' or their counsel's agreement.

6 Furthermore, if Defendants are correct that this Settlement is an unlawful abnegation of their  
 7 police power, then there could never be a settlement of a lawsuit challenging a city's unconstitutional  
 8 practices in which the city places any limits on those policies and practices. Such settlements are  
 9 commonplace, and the authorization for such lawsuits is unquestioned. *See Anti Police-Terror Project v.*  
 10 *City of Oakland*, 477 F.Supp.3d 1066, 1077 n. 5 (N.D. Cal. 2020) (limitation on municipal crowd  
 11 control policy); *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083,  
 12 1089 (9th Cir. 2010) (settlement agreement regarding restriction on soliciting work on public sidewalks  
 13 is enforceable.)

14 The Settlement is not void and there is no basis for relief pursuant to Rule 60(b)(4).

15 **D. Defendants Did Not Bring Their Rule 60(b)(5) Within a Reasonable Time and**  
 16 **Cannot Meet Their Burden to Show a Change in Circumstances that Justifies Relief**  
 17 **from the Settlement.**

18 In a last ditch effort to get out of the Settlement, Defendants seek relief under Rule 60(b)(5)  
 19 alleging continued enforcement of the Settlement "is no longer equitable." Mot. at 20:21-21:27, ECF  
 20 No. 239. Defendants' Rule 60(b)(5) motion, which is based solely on Settlement terms they agreed to  
 21 over three-and-one-half years ago, was not brought in a reasonable time, and Defendants do not meet  
 22 their burden to show a change in law or circumstances that justifies relief.

23 Rule 60(b)(5) motions "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1). In  
 24 *Twentieth Century-Fox Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1981), the court  
 25 affirmed the lower court's denial of a Rule 60(b)(6) motion for relief from a judgment entered pursuant  
 26 to stipulation based on the motion not being made within a reasonable time that had remarkably similar  
 27 facts to the instant case. The moving party did not appeal the judgment and brought the Rule 60(b)  
 28 motion six years after the original judgment was entered and for the first time asserted that the damages

1 provision of the judgment was invalid under California law. *Id.* Similarly, in *Morse-Starrett Prod. Co. v.*  
 2 *Steccone*, 205 F.2d 244, 249 (9th Cir. 1953), the court affirmed the district court’s denial of a Rule  
 3 60(b)(6) motion brought twenty-two months after entry of the original judgment when the party seeking  
 4 relief did not appeal the judgment and did not provide any explanation as to why he delayed in bringing  
 5 the motion.. “The provisions of rule 60(b)(6) were not intended to benefit the unsuccessful litigant who  
 6 long after the time during which an appeal from a final judgment could have been perfected first seeks to  
 7 express his dissatisfaction. The procedure provided by Rule 60(b) is not a substitute for an appeal.” *Id.*

8 Just like the moving parties in *Dunnahoo* and *Steccone*, Defendants’ current Rule 60(b) motion  
 9 is the first time that they have objected to the terms of the Settlement at issue that they agreed to over  
 10 three-and-one-half years ago. Settl., ECF No. 153-1. This case has been active for over four years, and  
 11 Defendants never objected to the inclusion of “Homeless Persons” in the Settlement or argued they  
 12 unlawfully surrendered their police powers. The court issued a TRO enjoining Defendants from  
 13 enforcing their Anti-Camping Ordinances. TRO at 2:10-3:12, ECF No. 37. This order was not limited to  
 14 enforcement against Plaintiffs. *Id.* Defendants agreed to extensions of this TRO three times. ECF Nos.  
 15 78, 80, 83, 84, 87, 88. Defendants submitted two briefs opposing Plaintiffs’ request for preliminary  
 16 injunction and did not raise any objection to the sthe TRO or the preliminary injunction applying to  
 17 people who were not Plaintiffs.. ECF Nos. 57, 90. The Preliminary Injunction was granted for the same  
 18 terms as the TRO. Prelim. Inj. Order at 7:3-7, ECF No. 110. Defendants did not appeal the order. After  
 19 the parties reached settlement, there was a dispute resolved by court order. Dispute Resolution Order,  
 20 ECF No. 169. Again, Defendants did not appeal this order. On August 21, 2024, Defendants filed a  
 21 motion for relief from the settlement agreement pursuant to Federal Rules of Civil Procedure 60(b)(5)  
 22 and (6) and did not raise the arguments they now base their motion on, even though all of these  
 23 arguments were available at that time since they are based on the terms of the Settlement. 60(b) Mot.,  
 24 ECF No. 209. On March 31, 2025, the court denied Defendants’ motion. *Warren*, 2025 WL 974068, at  
 25 \*1, \*15, ECF No. 226. Defendants did not appeal this order.

26 In this motion, Defendants provide no explanation for why they never raised their current  
 27 objections to the Settlement and why they did not bring this motion sooner. Defendants’ motion was not  
 28 made in a reasonable time.

Defendants also cannot meet their burden, as the moving party, to “establish that a significant change in facts or law warrants revision of the decree and the proposed modification is suitably tailored to the changed circumstance.” *Warren*, 2025 WL 974068, at \*6, ECF No. 226 (citing *Flores v. Rosen*, 984 F.3d 720, 740–41 (9th Cir. 2020) (describing the two-prong standard for modifying a consent decree under Rule 60(b)(5)) (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 393 (1992))).

There is no change in facts or law. Defendants are seeking relief from terms that they voluntarily agreed to and never objected to, until now. They do not point to any change of circumstance and in fact their entire argument is that these terms were void from the start of the Settlement. Since Defendant cannot show any change of law or circumstances, Defendants attempt to argue a mere “misunderstanding of the law”<sup>3</sup> is sufficient under *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992). *See* Mot. at 21:14-17, ECF No. 239. But, *Rufo* does not say that a party’s misunderstanding of the law is enough for relief under Rule 60(b)(5). Rather, *Rufo* says “[w]hile a decision that clarifies the law will not, in and of itself, provide a basis for modifying a decree, **it could constitute a change in circumstances** that would support modification if the parties had based their agreement on a misunderstanding of the governing law” *Rufo*, 502 U.S. at 390 (emphasis added.) There was no misunderstanding of the law.

Here Defendants do not allege any change of circumstance and therefore cannot meet their burden under Rule 60(b)(5).

#### **IV. CONCLUSION**

The Settlement Agreement that the Parties negotiated and agreed to in order to resolve Plaintiffs’ claims and dissolve the Preliminary Injunction that enjoined Defendants from enforcing its anti-camping ordinances is not void for the reasons discussed above. Plaintiffs respectfully request that the Court deny Defendants’ second Rule 60(b) motion for relief from the Settlement and deny their alternative request to sever certain terms from the Settlement.

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<sup>3</sup> While the Settlement at issue here is not a consent decree, in its order denying Defendants’ first Rule 60(b) motion this Court found the standard that applies to relief from a consent decree under Rule 60(b)(5) “instructive since that is the least demanding standard which defendants would arguably have to meet to justify the modification of their settlement agreement which was incorporated by a dismissal order.” *Warren*, 2025 WL 974068, at \*6, ECF No. 226.

1 DATED: August 29, 2025

Respectfully Submitted,  
Legal Services of Northern California

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4 By: /s/ Cory Turner  
Cory Turner  
Matthew K. Bowen  
Attorneys for Plaintiffs  
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