

LEGAL SERVICES OF NORTHERN CALIFORNIA
CORY TURNER, SBN # 285235
E-mail: cturner@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;
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-MCE-DMC

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION TO ENFORCE THE SETTLEMENT
AGREEMENT; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF MOTION**

Hearing on Dispute Resolution

Date: 9/13/2022

Time: 9:00 AM

Ctrm: Via Zoom Videoconference

Judge: Hon. Kendall J. Newman

1 **TO HON. KENDALL J. NEWMAN AND TO ALL PARTIES HEREIN:**

2 PLEASE TAKE NOTICE THAT, on September 13, 2022, at 9:00 a.m., or as soon thereafter as
3 counsel may be heard by the above-entitled Court, located at 501 I Street, Sacramento, CA 95814, in
4 the courtroom of Chief United States Magistrate Judge, Kendall J. Newman, Plaintiffs BOBBY
5 WARREN, ANDY LAMBACH, MICHAEL SAMUELSON, TRACY MILLER, TONA PETERSEN,
6 CAROL BETH THOMPSON, and CHRISTA STEVENS (collectively, “Plaintiffs”) will and hereby do
7 move the Court, pursuant to Paragraph 16(c) of the Settlement Agreement in *Warren, et al. v. City of*
8 *Chico, et al.* (Case No. 2:21-cv-00640-MCE-DMC, hereinafter “Settlement Agreement”), for a Motion
9 to Enforce the Settlement Agreement. This motion is brought on the following grounds: Defendant City
10 of Chico is failing to comply with the requirement in Paragraphs 10(g) and 10(h) of the Settlement
11 Agreement that the Individual Assessments to determine whether there is an available “Appropriate
12 Shelter Space” for an individual must include an evaluation of each reason listed in Paragraph 10(h) that
13 may cause a shelter space not to be appropriate.

14 This motion is based on this Notice of Motion and Motion, the Memorandum of Points and
15 Authorities filed herewith; the declarations of Cory Turner, Candi Adams, Stefanie Avery, Magen
16 Farris-Miranda, and Geoffrey Garren; the pleadings and papers on file herein; and upon such other
17 evidence or argument as may be presented to the Court at the time of the hearing.

18
19 DATED: August 25, 2022

Respectfully Submitted,

20 **Legal Services of Northern California**

21 /s/ Cory Turner
22 Cory Turner
23 Attorney for Plaintiffs
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INTRODUCTION

Before the City of Chico (“City”) may enforce its Anti-Camping Ordinances and Regulations as to any homeless person on public property, it must meet with the homeless person and conduct an Individual Assessment to determine if an available shelter space is “appropriate” for that person. ECF No. 153-1 at p. 4, ¶¶ 3(e)-(f); p. 13-14, ¶¶ 10(g)-(h). To determine if a shelter space is “appropriate” the City’s Outreach and Engagement team must consider, at the very least, the list of factors in Paragraph 10(h) of the Settlement Agreement. ECF No. 153-1 at pp. 13-14, ¶¶ 10 (g)-(h).

Contrary to the express terms of the Settlement Agreement, the City refuses to conduct Individual Assessments that include an evaluation of all the factors listed in Paragraph 10(h). Plaintiffs accordingly request that the Court order the City to comply with the requirements in the Settlement Agreement that the Individual Assessments include all factors listed in Paragraph (h) prior to further enforcement of its anti-camping ordinances.

STATEMENT OF FACTS

On June 30, 2022, Plaintiffs’ Counsel emailed the City that it had received reports about multiple problems regarding Individual Assessments that began that day at Comanche Creek Greenway. These problems included that Outreach and Engagement Staff (“O&E Staff”) were referring homeless persons to shelter without first inquiring about the multiple factors in Paragraph 10(h) that would make shelter inappropriate. Turner Decl., Ex. 1 (6/30/22 Email from Cory Turner to Eric Salbert), p. 1. Plaintiffs asked if this was true and requested that the City confirm: 1) that O&E Staff were, at minimum, asking questions and assessing for the reasons that shelter is not appropriate under Paragraph 10(h); and 2) the criteria the City uses to determine whether to refer homeless individuals to the Pallet Shelter Site or the Torres Shelter. *Id.*

The next day, the Parties entered into the meet and confer process regarding the City’s Individual Assessment procedure pursuant to the Dispute Resolution Procedure in Paragraph 16(a). Turner Decl., Ex. 2 (7/1/22 Email from Cory Turner to Eric Salbert), p. 1. Plaintiffs repeated their request for the City’s shelter referral criteria. *Id.* The Parties engaged in a lengthy meet and confer process¹ that

¹ The meet and confer process has included discussion of the Individual Assessment process generally as well as the outcome of Individual Assessment’s for individual people. This motion only deals with the Individual Assessment process, and does not challenge individual determinations the City has made.

1 included numerous emails, phone calls, video conferences, an informal conference with Judge Newman
 2 on July 18, 2022 (ECF No. 173), and an in-person meeting between the Parties in Chico on July 21,
 3 2022.

4 During the meet and confer process, Plaintiffs provided the City with proposals and a proposed
 5 Individual Assessment screening form that conform to the Settlement Agreement. Turner Decl., Exs. 7
 6 (7/26/22 Email from Sarah Steinheimer to Mark Murray), 11 (8/9/22 Email from Cory Turner to Eric
 7 Salbert), p. 3-7). In short, Plaintiff's proposal is that the City revise the Individual Assessment process
 8 and form to explicitly ask about all factors in Paragraph 10(h). The City refuses to make modifications
 9 to their Individual Assessment process. Its proposal is to address the Individual Assessment defects
 10 through the individual grievance process and to shift its Individual Assessment burden regarding
 11 accommodations for people's disabilities onto shelter providers after the City makes a referral. Turner
 12 Decl., Exs. 6 (7/22/22 Email from Eric Salbert to Sarah Steinheimer); 8 (8/2/22 Email from Eric Salbert
 13 to Cory Turner), p. 2; 10 (8/8/22 Email from Eric Salbert to Cory Turner), p. 1.

14 On August 11, 2022, Plaintiffs' Counsel and the City agreed they would not be able to reach
 15 agreement on what the Individual Assessment process should consist of through the informal meet and
 16 confer process. Turner Decl., Exs. 12 (8/11/22 Email from Cory Turner to Eric Salbert), p. 1; 13
 17 (8/12/22 Email from Eric Salbert to Cory Turner).

18 The City continues to refuse to do the following to comply with the Settlement Agreement:

- 19 1) Follow the requirements of Paragraph 10(g) by conducting Individual Assessments of
 20 Homeless Persons that determines whether shelter is inappropriate for any of the reasons
 21 listed in Settlement Paragraph 10(h) and;
- 22 2) Refer people to appropriate shelter only after first making a determination that each of the
 23 reasons listed in Settlement Paragraph 10(h) are not applicable to the Homeless Persons
 24 pursuant to Settlement Paragraph 10(j).

25 26 **ARGUMENT**

27 **I. The City is bound by the terms of the Settlement Agreement.**

As discussed in prior briefing, the Court has retaining jurisdiction to enforce the Settlement Agreement. ECF No. 153; *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 381 (1994); *K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 967 (9th Cir. 2014). Paragraph 3 of the Stipulated Order re: Settlement, Dismissal, and Continuing Jurisdiction provides:

The Court expressly retains exclusive jurisdiction for a period of five (5) years from the date of entry of this Order to enforce the Settlement Agreement, and refers this matter to Magistrate Judge Kendall J. Newman to resolve any future disputes pursuant to the Dispute Resolution procedures in the Settlement Agreement regarding interpretation, performance, or enforcement of the Settlement Agreement, including and expressly, nonmonetary terms set forth in the Settlement Agreement.

ECF No. 153 at p. 4; *see In re Volkswagen “Clean Diesel” Mktg., Sales Practices, and Prods. Liab. Litig.*, 975 F.3d 770, 775 (9th Cir. 2020) (“As the district court expressly retained authority to ‘ensure compliance’ with the settlement agreement’s terms, the district court was well within its jurisdiction to determine whether the new Framework breached the agreement.”).

“The interpretation of a settlement agreement is governed by principles of state contract law.” *Botefur v. City of Eagle Point, Or.*, 7 F.3d 152, 156 (9th Cir. 1993); *accord Loftus v. Loftus*, 753 F. Appx 461 (9th Cir. 2019). “This is so even where a federal cause of action is ‘settled’ or ‘released.’” *Botefur*, 7 F.3d at 156; *accord Jones v. McDaniel*, 717 F.3d 1062, 1067 (9th Cir. 2013); *see also Wilcox v. Arpaio*, 753 F.3d 872, 876 (9th Cir. 2014) (“The parties rightly agree that state contract law governs whether they reached an enforceable agreement settling the federal and state law claims alleged in Plaintiffs’ complaint.”).

“[I]t is an established principle of California contract law that contracts are to be interpreted according to the objective intent of the parties.” *Daniels v. Aguillera*, 2019 WL 95510, *3 (E.D. Cal. Jan. 3, 2019) (interpreting settlement agreement in prior lawsuit). Pursuant to California law, a “court must interpret the contract by examining the contract’s language, the parties’ clear intentions as expressed in the contract and the circumstances under which the parties contracted.” *Evans v. Y’s Fries, Inc.*, 2011 WL 189978, *2 (E.D. Cal. May 19, 2011) (citing *AIU Ins. Co. v. Superior Court*, 51 Cal.3d 807, 822 (1990)).

Where, as here, the settlement agreement is reduced to writing, “the intention of the parties is to be ascertained from the writing alone, if possible[.]” *See Loftus*, 753 F. App’x at 461 (citing Cal. Civ.

Code § 1639); *see also Evans*, 2011 WL 189978, *2 (“The parties’ intent is to be inferred, if possible, solely from the written provisions in the contract.”). Moreover, “California has a strong policy in favor of enforcing settlement agreements.” *Guinn v. Sturm*, (E.D. Cal March 7, 2013) 2013 WL 87955, *2 (citing *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1357 (2007)).

II. Paragraphs 10(g) and 10(h) of the Settlement Agreement Require the City’s Individual Assessment to Assess and Make a Determination for all Factors listed in Paragraph 10(h) that Make a Shelter Space Inappropriate.

The Settlement Agreement requires the City to provide an Individual Assessment of whether there is an “appropriate shelter space” available to homeless persons living in a public property that is subject to enforcement of the City’s anti-camping ordinance. ECF No. 153-1 at p. 4, ¶¶ 3(e)-(f); p. 13-14, ¶¶ 10(g)-(h).

Paragraph 3(e) provides that “‘Individual Assessment’ means Outreach and Engagement Staff meeting with and evaluating a Homeless Person to determine if an Appropriate Shelter Space (as defined in Paragraph 10 of this Agreement) is available to the person.” ECF No. 153-1 at p. 4

Paragraph 3(f) next lists a number of requirements for the O&E staff, including that they “[h]ave training and experience in recognizing when a Homeless Person may have a mental health condition and the ability to sensitively communicate with Homeless Persons with mental health conditions; and training/experience with reasonable accommodation law,” and that they “[h]ave the training/experience necessary to conduct Individual Assessments described in Paragraph 3(e) of this Agreement.” ECF No. 153-1 at p. 5.

During the Individual Assessment, “O&E [Staff] must assess whether an open Pallet Shelter at the Housing Site or bed at the Torres Shelter is an Appropriate Shelter Space, *as defined in Paragraph 10(h) of this Agreement*, for the individual.” ECF No. 153-1 at p. 13, ¶ 10(g) (emphasis added).

Meanwhile, Paragraph 10(h) provides seven reasons that a shelter is not an appropriate shelter space for an individual, five of which depend on the individual’s circumstances, characteristics, or conditions. ECF No. 153-1 at p. 14, ¶ 10 (h). Those five factors are:

- i. The shelter cannot accommodate the person’s physical and/or mental disabilities;
- ii. The shelter’s hours and/or other policies unreasonably impair or otherwise unreasonably hinder a person’s ability to work, engage in other income generating

activities, and/or attend school;

iii. In the case of a family unit, the family would have to be involuntarily separated into two or more different rooms or units, but a family unit may voluntarily accept such an arrangement;

iv. The individual would be disqualified from accessing the shelter space due to any restrictions, rules or covenants beyond their reasonable use or control, such as having a pet that the shelter does not allow;

vii. The shelter space cannot provide the appropriate single-gender placement for someone who reasonably objects to mixed-gender placement.

Id.

Paragraph 10(g) requires that the assessment of Appropriate Shelter Space is determined by the definition of Appropriate Shelter Space in Paragraph 10(h). The plain language of Paragraphs (g) and (h) make clear that the City has a duty to assess for the factors listed in Paragraph 10(h) in every Individual Assessment that it conducts.

III. The City's Individual Assessment Procedure Violates the Settlement Agreement by Failing to Assess for All the Factors in Paragraph 10(h).

The City is not performing Individual Assessments as required by the Settlement Agreement because its practice is to not ask about all of the defined factors for when a shelter is not an "Appropriate Shelter Space." The result is that the Individual Assessments are extremely limited, with little information being exchanged, and there is no documentation or evidence of the level of analysis necessary to make an informed determination for the reasons a shelter may be inappropriate in Paragraph 10(h).

A. Recent Assessments Demonstrate the City's Violations of the Settlement Agreement.

Recent Individual Assessments show that the City is failing to assess individuals for the factors in Paragraph 10(h). When O&E Staff conducted Individual Assessments at the Comanche Creek Greenway at the end of June and beginning of July 2022, they only asked a few questions. Declaration of Candi Adams ¶ 3; Declaration of Stephanie Avery ¶ 3; Declaration of Magen Farris-Miranda ¶ 3; Declaration of Geoffrey Garren ¶ 3; Turner Decl., Ex. 14 (7/5/22 Email from Sarah Steinheimer to Eric Salbert), p. 2-4. These limited questions were not related to many of the factors in Paragraph (h), including whether the individuals had any mental or physical disabilities that required accommodation (10(h)(i)), whether any policies would impair the individuals' ability to work (10(h)(ii)), whether they

would be separated from a member of their family (10(h)(iii)), whether any rules other than pet rules would disqualify the individuals from a shelter (10(h)(iv)), and whether there was appropriate space available for the persons' gender identity. Adams Decl. ¶¶ 3-4, 7-10; Avery Decl. ¶¶ 4-8; Farris-Miranda Decl. ¶¶ 9-13; *see* Garren Decl. ¶¶ 3-7; *see also* Turner Decl., Ex. 14, p. 2-4.

The individuals did not know on their own what information to provide to O&E staff about their personal situation so that they could be properly assessed for whether shelter is appropriate under the settlement. Adams Decl. ¶ 10; Avery Decl. ¶ 9; Farris-Miranda Decl. ¶ 14. They should have been assessed pursuant to Paragraphs 10(g) and 10(h) at the time and been asked about or had a discussion with O&E Staff about each factor in Paragraph 10(h) prior to the referral, regardless of what the outcome would have been.

As if this was not bad enough, two homeless persons notified O&E Staff of factors in Paragraph 10(h) that applied to them but those were not considered in the assessment. One person told O&E Staff that he had a partner and was not a single person (Paragraph 10(h)(iii)). Garren Decl. ¶ 5. Another person told O&E Staff about a disability that she believed prevented her from entering the shelter space (Paragraph 10(h)(i)). Farris-Miranda Decl. ¶ 6. O&E Staff did not consider or discuss this information during the assessment prior to making the referral and did not discuss or reconsider the determination when it was provided after the referral. Garren Decl. ¶¶ 5-6; Farris-Miranda Decl. ¶ 6,

Without an Individual Assessment that explains the rules of the shelter(s) and specifically asks about all the factors in Paragraph 10(h) that make a shelter space inappropriate, the assessments will be incomplete and insufficient to make a referral to appropriate shelter.

B. The City's Individual Assessment Form Confirms the City Does Not Assess for the Factors in Paragraph 10(h).

During the meet and confer process, Plaintiffs repeatedly asked the City for information about the criteria it uses to determine whether someone should be referred to the Pallet Shelter site or the Torres Shelter and for training of the O&E staff. *See* Turner Decl., Exs. 1, p. 1; 2, p. 1; 7, p. 1-2; 14, p. 1. The City responded by providing a form called "Comanche Individual Assessment, Determination of Suitability for Shelter" and documentation of the training O&E Staff received. Turner Decl., Exs. 3, pp. 3-7; 9 (O&E Training Materials). The City has not provided any other documents regarding criteria it

1 uses to conduct Individual Assessments.

2 The City's assessment form does not address the required factors in Paragraph 10(h). ECF No.
3 153-1, p. 14; Turner Decl., Ex. 3, p. 3-7.

4 The form limits a finding of "suitability" for shelter to two factors, and a finding of
5 nonsuitability for shelter to four factors. Turner Decl., Ex. 3, pp. 4-5. There are checkboxes at the
6 bottom of the second page under the heading, "Suitable for shelter YES". Turner Decl., Ex. 3, p. 4. The
7 first says "Ability to Understand Conversation", and the second says "Able to Care for Self". *Id.* The top
8 of the third page has five possible checkboxes under the heading, "Suitable for shelter NO (10h)". *Id.* at
9 p. 5. There are four factors with checkboxes: 1) "Inability to Understand Conversation", 2) "Unable to
10 Care for Self", 3) "Refusing Conversation (will not talk with staff)", 4) "Refusing Assessment (will
11 engage with staff but refusing assessment)", and 5) "Unable to Converse". *Id.*

12 Paragraph 10(h) of the Settlement Agreement does not contain any of the form's factors for
13 "suitability", but some of them may arguably be pertinent to Paragraph 10(h)(i) regarding a shelter's
14 ability to accommodate a homeless person's physical and/or mental disabilities. ECF No. 153-1 at p. 14.

15 However, the "suitability" inquiry in the form is far narrower than the requirements to assess for
16 whether shelter is appropriate in Paragraphs 10(g) and 10(h) of the Settlement Agreement. They are
17 related to potential mental health conditions, but people who are able to understand conversation and
18 care for themselves may still have other physical or mental disabilities that make a shelter space
19 inappropriate. For example, there are symptoms of certain mental disabilities that may be triggered or
20 aggravated by living in a dormitory setting like a congregate shelter without necessarily making a person
21 unable to understand conversation or care for themselves. *See* ECF No. 97-5 (Declaration of Lori
22 Mason), pp. 6-13; Adams Decl. ¶¶ 5-6; Farris-Miranda Decl. ¶¶ 6, 8; Garren Decl. ¶¶ 8-10.

23 The form makes the above-listed factors the exclusive factors used to determine suitability or
24 nonsuitability for shelter. The form states the factors for "Suitability of Shelter NO 10(h)." The
25 reference to 10(h) indicates that the listed factors are the exclusive assessment factors under paragraph
26 10(h) of the settlement agreement. There are no questions or spaces in the assessment form for
27 documenting an assessment of whether accommodations of physical and/or mental disabilities are
28 possible as required by Paragraph 10(h)(i). Turner Decl., Ex. 3, pp. 3-7, *see* ECF No. 153-1 at p. 14.

1 While the form does ask “do you need an ADA unit?” this is also not enough to fully assess
2 whether a shelter space can accommodate a person’s disabilities. Turner Decl., Ex. 3, p. 6; ECF No.
3 153-1 at p. 14. First, this question appears to be directed to those being referred to the Pallet Shelter site
4 only, since that site includes ADA Pallet Shelter units. Second, the absence of any other disability-
5 related inquiry or space for other reasons in the form that a shelter space may not be appropriate
6 pursuant to Paragraph 10(h)(i) means that it does not allow for assessment of those other reasons,
7 including mental disabilities as discussed above or physical disabilities that may not require a physically
8 accessible unit but still may make a shelter space in appropriate.

9 There is no question or space on the assessment form for when a shelter may be inappropriate
10 under Paragraph 10(h)(ii) due to the “shelter’s hours and/or other policies [that] unreasonably impair or
11 otherwise unreasonably hinder a person’s ability to work, engage in other income generating activities,
12 and/or attend school. Turner Decl., Ex. 3, pp. 3-7; ECF No. 153-1 at p. 14. To assess for this, the City
13 must ask if the person works, engages in income generating activity or attends school and discuss
14 whether the shelter’s hours or policies would unreasonably impair their ability to do so.

15 The form does not assess whether “a family would be involuntarily separated into two or more
16 different rooms or units . . .” per Paragraph 10(h)(iv). For example, there is no question about whether
17 the person lives with someone else or is part of a family unit. While there is a question about whether
18 someone needs a single or double occupancy unit, this appears to pertain to the Pallet Shelter site
19 specifically since only that shelter site offers single or double occupancy units.

20 The only questions related to whether an “individual would be disqualified from accessing the
21 shelter space due to any restrictions, rules or covenants beyond their reasonable use or control” (Para.
22 10(h)(iv)) are about pets and whether the individual is a “restricted person” (disqualified from the Pallet
23 Shelter Site due to being registered pursuant to Penal Code 290 or having an active warrant for a violent
24 felony). There is no question or space for Paragraph 10(h)(vii), where the shelter “cannot provide the
25 appropriate single-gender placement for someone who reasonably objects to mixed-gender placement.”
26 ECF No. 153-1 at p. 14.

27 Despite the limited questions and categories in the City’s Individual Assessment form, the City’s
28 position is that Individual Assessment complies with the Settlement Agreement. Far from denying

1 Plaintiffs' contentions that the City is not asking about all factors in Paragraph 10(h), the City provided
2 the following description of the Individual Assessment process in response to Plaintiffs' initial inquiries
3 that people were being asked as few as four questions:

4 The process is similar to taking a deposition: there are a few basic questions (and
5 certainly more than four) to start a conversation that helps O&E complete a full
6 assessment. O&E engage in a conversational assessment because it helps to keep
situations from escalating and allows them to assess alertness and orientation as
indicators of potential mental/physical health issues.

7 Turner Decl., Ex. 3, p. 1.

8 The City later provided the following explanation of how it assesses for the factors in paragraph
9 10(h):

10 O&E staff use the assessment form as a launch pad for a discussion with homeless
11 individuals, and O&E staff pay attention to visual and verbal cues to better assess
12 whether a particular person can enter either the Torres Shelter or the Pallet Shelter. For
13 example, if a person provides non-responsive information, ruminates on irrelevant
subjects, or engages in inappropriate physical behavior, those would be indicators for
O&E to explore various medical and mental health issues.

14 Turner Decl., Ex. 5 (7/15/22 Email from Eric Salbert to Court), p. 2.

15 The City's above descriptions of the Individual Assessment process do not contradict Plaintiffs'
16 allegation that the City is not assessing for all factors in Paragraph 10(h). Further, the City's own forms
17 and training materials corroborate Plaintiffs' allegations. The City provided assessment forms to
18 Plaintiffs that had been used for people at Comanche Creek.² Turner Decl., Ex. 4. Those assessment
19 forms demonstrate that the City is not screening for the factors in Paragraph 10(h). *Id.* There are only
20 checked boxes and no information about what was said by either the O&E Staff member or the
21 individual. *Id.* There is nothing to indicate that a larger conversation took place that sufficiently assessed
22 for the factors in Paragraph 10(h).

23 There is no room anywhere on the form for additional information of the nature that the City
24 claims to be gathering, and nowhere near enough room for analysis and determinations for every reason
25 listed in Paragraph 10(h) that makes shelter inappropriate. Turner Decl., Ex. 3, pp. 3-7; ECF No. 153-1
26 at p. 14. There is no indication on the form that it represents "a few basic questions. . . to start a

27 ² There forms were provided to Plaintiffs' counsel by The City. Plaintiffs do not have permission to publically
28 release them. Therefore, Plaintiffs have redacted the identifying information for all individuals referenced in the form. If
necessary, Plaintiffs are willing to file the unredacted versions under seal if asked to do so.

1 conversion that helps O&E complete a full assessment” as the City has claimed. Turner Decl., Ex. 3, pp.
2 1, 3-7. Rather, the fact that the forms title includes “Suitability for Shelter” and has two sets of
3 checkboxes titled “Suitability” and “Nonsuitability”, strongly indicates that this form represents the
4 entirety of the City’s assessment. Turner Decl., Ex. 3, pp. 4-5. There also is no information on the form
5 about how to make a referral based on the assessment, so there is no way to know how O&E Staff are
6 deciding where to refer individuals. Turner Decl., Ex. 3, pp. 3-7. By its terms, the form is the exclusive
7 assessment inquiry. *Id.*

8 The training materials the City has provided also do not instruct O&E to make inquiries beyond
9 the form. Turner Decl., Exs. 3, pp. 3-7; 9; ECF No. 153-1 at p. 14. The training that the City states it
10 provided to O&E staff is three sessions about trauma informed care (Turner Decl., Ex. 9, pp. 1-13, 14-
11 30, 64-74), one session about the services provided by the Jesus Center and its philosophy (*Id.* at pp. 31-
12 39), one session about ethics and confidentiality (*Id.* at pp. 40-47), one session about motivational
13 interviewing that addresses interview techniques but does not address the subject matter of the
14 assessments (*Id.* at pp. 48-56) and one about self-care of staff (*Id.* at pp. 57-63). Plaintiffs do not
15 question the value of these trainings. However, based on the materials, none of the trainings address the
16 content of the Individual Assessments or direct staff to ask questions beyond what is in the assessment
17 form.

18 Moreover, the City offers no evidence of particular training or expertise of O&E Staff regarding
19 the ability to properly assess “visual and verbal cues” in lieu of asking questions and documenting the
20 person’s responses. Turner Decl., Ex. 5, p. 2. Further, making the assessment for the factors in
21 Paragraph 10(h) depend on the O&E Staff member’s individual ability to correctly recognize and
22 respond to non-verbal and verbal cues rather than speaking directly with the person about the relevant
23 reasons that make shelter inappropriate is inadequate and unreliable. The assessment is the central tenet
24 of the City’s enforcement process that may result in criminal citations and prosecutions for homeless
25 individuals. A person found to have appropriate shelter available who then declines the referral is
26 subject to a 72-hour notice and then potential criminal citation, while someone found not to have
27 appropriate shelter available is not subject to a 72-hour notice and citation. ECF No. 153-1 at p. 15, ¶¶
28 10(l), (m). Given what is at stake, no part of this process can depend solely to an individual’s ability to

1 correctly recognize, interpret, and respond to subtle verbal and non-verbal cues.

2 The only document that addresses the content of the Individual Assessments is the form, and
3 that, as explained above, does not include all of the assessment requirements in the Settlement
4 Agreement.

5 **C. The City does not dispute that they don't ask questions about all of the factors in**
6 **Paragraph 10(h).**

7 The City has justified its refusal to require the inquiry mandated by the Settlement Agreement on
8 the grounds that if the O&E staff asked about the factors listed in the Settlement Agreement, people will
9 lie: "...you are well aware that the population we are working with fabricate claims on a regular basis."
10 Turner Decl., Ex. 3, p. 1. In a separate email, the City similarly stated that asking the questions required
11 by the Settlement Agreement "will prompt individuals to make spurious claims." Turner Decl., Ex. 8, p.
12 2. This is not a valid reason to violate the plain language of the Settlement Agreement. Moreover, there
13 is no factual basis for the City's claim. It is baseless speculation. If the City is concerned about the
14 answers they might receive, they can train O&E Staff in proper interview techniques instead of violating
15 the Settlement Agreement's assessment requirements.

16 In its defense, the City has also contended that they do not need to address all the factors in
17 Paragraph 10(h) of the Settlement Agreement because people supposedly know about what is in the
18 Settlement and will raise those issues on their own. Not only has the City offered no evidence to support
19 this supposition but this unsubstantiated contention is irrelevant and incorrect. First, the plain language
20 of Paragraphs 10(g) and (h) require that the assessment include all the reasons listed in Paragraph (h) –
21 the City must do this even if people know about it. ECF No. 153-1 at pp. 13-14. Second, there is no
22 reason to assume that people will raise the factors in Paragraph 10(h) during the assessment even if they
23 know about them. There will almost certainly be people with information that is pertinent to the
24 assessment that they will not provide without prompting. There also is no reason to believe people who
25 have mental impairments will understand what they need to say in order to make that fact known to
26 O&E Staff without being asked. Instead, people in that situation are left to depend on O&E Staff's
27 alleged ability to recognize "visual and verbal cues." Turner Decl., Ex. 5, p. 2. Finally, the declarations
28 submitted by Plaintiffs demonstrate that the City's position is just plain untrue because at least some

people do not know about the specific factors for determining shelter is not appropriate under the Settlement Agreement. *See, e.g.*, Adams Decl. ¶ 11; Avery Decl. ¶ 9; Farris-Miranda Decl. ¶ 14; *see also* Garren Decl.

The City claims that it prefers a “conversational assessment.” Turner Decl., Ex. 3, p. 1. Plaintiffs agree with this sentiment. However, that “conversational assessment” must include all of the elements required by the Settlement Agreement. The City has made clear they will not require that. The Court should order the City to comply.

IV. The City’s Grievance Procedure Fails to Bring the Individual Assessment Process into Compliance with the Settlement Agreement and Wrongfully Shifts the Burden to Consider Disability-Related Claims onto the Shelters.

The City’s position is that it will not make any changes to the Individual Assessment process; the City instead insists that people who disagree with their referrals can file a grievance after receiving the referral. Turner Decl, Exs. 6, p. 1; 10, p. 1. The City’s proposal is that, if, upon completion of the grievance procedure, the City refers the person to a shelter the person believes is not able to accommodate their mental and/or physical disabilities, then that person must make a reasonable accommodation request to the shelter. *Id.* This is insufficient for two reasons: 1) It does not address the Settlement Agreement violations in the current Individual Assessment process that makes referrals without a proper assessment for the factors in Paragraph 10(h); and 2) The Settlement Agreement makes the City responsible for determining whether the shelter is able to accommodate a person’s disability before making a referral to appropriate shelter. *See* ECF No. 153-1 at p. 15, ¶ 10(j).

A. The grievance procedure does not address the settlement violations in the underlying Individual Assessment.

“Anyone who is denied admission to reside in the [Pallet Shelter Site] shall receive a written notice stating the reason for denial and the grievance procedure for challenging the denial.” ECF No. 153-1, p. 10, ¶ 6(i). The Grievance Procedure is meant to provide a remedy after someone does not receive a referral to the Pallet Shelter and is neither a substitute nor is it sufficient to address the City’s systemic failure to attempt to conduct a proper Individual Assessment and corresponding failure to refer to appropriate shelter as required by Paragraphs 10(g) and 10(h). The City’s Individual Assessment

1 procedures must comply with the Settlement Agreement in all cases, regardless of whether individuals
2 file a grievance.

3 Both Parties acknowledge that even under the most thorough procedures, there will be times
4 when the information O&E Staff receive at an Individual Assessment is not sufficient to determine
5 whether one or more of the factors in Paragraph 10(h) apply and supplemental information will be
6 required. The most common is likely to be disability-related claim(s) pursuant to Paragraph 10(h)(i), but
7 others may arise, such as confirming impairment of ability to work or go to school (Para. 10(h)(ii)),
8 confirming a couple would be separated (Para. 10(h)(iii)), or being disqualified from entry due to
9 something that is reasonably beyond the individual's control (Para. 10(h)(iv)). ECF No. 153-1 at p. 14.
10 In such situations, O&E will not yet be able to determine whether a shelter space is appropriate, which is
11 the prerequisite to then "provide the homeless person written notice of the Appropriate Shelter Space"
12 pursuant to Paragraph 10(j). ECF No. 153-1 at p. 15. In these situations, the City cannot issue and
13 cannot serve the written notice of Appropriate Shelter Space. The Settlement also prohibits the City
14 from then serving the individual with a 72-hour Illegal Encampment Notification. ECF No. 153-1 at p.
15 15, ¶ 10(l).

16 The O&E Staff "must assess whether an open Pallet Shelter at the Housing Site or bed at the
17 Torres Shelter is an Appropriate Shelter Space" for that person. ECF No. 153-1 at p. 13, ¶ 10(g). It is
18 O&E's burden to show the shelter site is "appropriate" as defined in the settlement agreement, prior to
19 making the referral. The grievance procedure cannot be a substitute for a complete assessment. It is
20 used only when the homeless individual disagrees with the result of the assessment that was done. ECF
21 No. 153-1, p. 10, ¶ 6(i).

22 It is the City's obligation to address an individual's concern that a shelter space is not
23 "appropriate" for someone because of a factor listed in Paragraph (h). For example, if someone tells
24 O&E they do not think they can go to the a shelter because they must come and go after the curfew due
25 to work (Para. 10(h)(ii)), the burden is on O&E Staff to work with the shelter to determine if this would
26 be allowed. If the shelter says someone cannot leave past 6 pm, then the person would need to be
27 referred to the other available shelter if it will allow the person to leave or find that there is no
28 appropriate shelter available. If the shelter says it allows people to come and go past the curfew for

work, then the shelter may be an appropriate referral. The key is that O&E must make this determination before making the referral. The grievance procedure does not absolve the City of its obligation to do an assessment that meets the Settlement Agreement requirements.

B. The City may not dump its obligation to make a pre-referral determination of whether shelter is appropriate onto the shelter by making an improper referral.

The second part of the City's position indicates that the City believes a homeless person cannot make a reasonable accommodation request until they are actually staying in a shelter. This is wrong. The settlement agreement requires that O&E Staff assess and determine whether the shelter is "appropriate" before making the referral. ECF No. 153-1 at p. 13-15, ¶¶ 10(g), (h), (j). And a referral will not be "appropriate" if it cannot accommodate someone's physical or mental disabilities. ECF No. 153-1 at p. 14, ¶ 10(h)(i). The fact that the shelters have an obligation to reasonably accommodate their residents does not absolve the City of its assessment obligation under the settlement agreement. Both are required.

Plaintiffs acknowledge that there will be situations, most likely when the City requests verification of disability-related claims, where the individual does not control how long it will take to provide the needed information to verify whether shelter is appropriate. For these situations, Plaintiffs propose that the individuals be allowed to temporarily stay in the shelter of their choice for up to 30 days or in an alternative site for up to 60 days while awaiting the information.

PROPOSAL

Plaintiffs have previously proposed the following procedure for Individual Assessments and propose it here, as well. The full procedure and proposed assessment form are attached separately. Turner Decl., Exs. 7; 11, pp. 3-7. This proposed process allows the City to provide accurate information about the shelter and analyze whether the reason a person gives for not being able to go into the shelter is an allowed reason under the settlement agreement. The proposed process will result in better documentation and a clearer understanding of why someone was referred to a particular shelter.

1. **Step 1:** During the Individual Assessment, O&E staff must be familiar with the physical amenities, procedures, and rules of both the Pallet Shelter and the Torres Shelter. Step 1 is for O&E staff to describe one or both of the shelters, including the one to which the City plans to refer most people,

1 and their procedures and rules to the homeless person.

2 2. **Step 2:** O&E staff must then ask the homeless person about each category that may make a
3 shelter space not “appropriate” per Paragraph 10(h), and document the person’s response.

4 3. **Step 3:** After O&E has asked the above questions and all necessary follow up questions to obtain
5 sufficient information, and recorded the person’s response, O&E must make a determination of whether
6 any reason(s) the person identified meet(s) one of the reasons shelter is not “appropriate” per paragraph
7 10(h). This analysis or determination should be recorded in the Individual Assessment Form.

8 4. **Step 4:** If the person raises a disability-based reason for not being able to go into a specific
9 shelter space, O&E must consider this **before making the referral** under the settlement agreement. If
10 the individual, through no fault of their own, is unable to provide necessary supplemental information or
11 verification of their claim for why a shelter is not appropriate, then the individuals be allowed to
12 temporarily stay in the shelter of their choice for up to 30 days or in an alternative site for up to 60 days
13 while awaiting the information.

14 The Individual Assessment Form should be updated to include all of the steps in the process.
15 Plaintiffs’ counsel provided the City a proposed Individual Assessment Form. Turner Decl., Ex. 11, pp.
16 3-7.

17 **CONCLUSION**

18 For the foregoing reasons, Plaintiffs respectfully request that issues above be decided in their
19 favor as follows:

- 20 1. Stay all enforcement until the City complies with the requirements of this order;
- 21 2. Order the City to adopt Plaintiffs’ proposed Individual Assessment procedure and Assessment
22 Form or create policies and forms that are substantially similar and will adequately assess people
23 for the reasons the shelter is inappropriate under Paragraph 10 (h);
- 24 3. Order the City to create a training program that adequately trains O&E Staff to conduct
25 Individual Assessments in accordance with these policies and procedures, and;
- 26 4. Order the City to consider all homeless individuals in future enforcement areas as not having
27 been previously assessed until they have undergone an Individual Assessment under the policies
28 and procedures implemented pursuant to this order.

DATED: August 25, 2022

Respectfully Submitted,

Legal Services of Northern California

/s/ Cory Turner
Cory Turner
Attorney for Plaintiffs