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13 UNITED STATES DISTRICT COURT  
14 DISTRICT OF ARIZONA

15 Fund for Empowerment, *et al.*,

16 Plaintiffs,

17 v.

18 City of Phoenix, *et al.*,

19 Defendants.

Case No.: CV-22-02041-PHX-GMS

20 **DEFENDANT CITY OF PHOENIX'S OPPOSITION TO PLAINTIFFS' REQUEST**  
21 **FOR MODIFICATION OF PRELIMINARY INJUNCTION AND MOTION FOR**  
22 **ORDER TO SHOW CAUSE**  
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1 Plaintiffs' Motion presents a fictionalized account of the May 10, 2023 cleanup that is  
2 based on mischaracterizations of the evidence and ill-informed guesswork at best. Tellingly,  
3 Plaintiffs couch many of their allegations in equivocal language, such as stating that the City  
4 "seemingly" failed to comply with terms of the injunction or that "there is reason to believe"  
5 the City may be violating the constitutional rights of unsheltered individuals. This is  
6 unsurprising, as Plaintiffs base many of their conclusions on unreliable statements from  
7 uninformed spectators. For example, a bystander may see the City disposing of an  
8 unsheltered individual's property and draw the unfounded conclusion that the City is  
9 violating that person's constitutional rights, when in fact, the person requested such a  
10 disposal. This is just one example of the many errors that pervade Plaintiff's Motion. Indeed,  
11 given the major gaps in, and inadmissibility of, the alleged evidence presented in the Motion,  
12 and taken in conjunction with the press release that was issued almost immediately after it  
13 was filed, the Court should look with disfavor upon the Motion, which appears to have been  
14 designed as a publicity stunt as much as anything else.

## 15 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 16 **Preliminary Statement**

17 It has been said that the absence of evidence is not evidence of absence. Disregarding  
18 this axiom, Plaintiffs have asked this court to find, by clear and convincing evidence, that the  
19 City has violated constitutional rights based on a handful of statements from individuals who  
20 claim they *did not personally see compliance*. For instance, Plaintiffs state, in a passive voice  
21 that disguises the source of the allegation, that the City was "not seen storing or marking  
22 collected items for storage." Similarly, Plaintiffs allege, in threadbare fashion, that:  
23 "Observers also did not see the City mark any items as 'abandoned' or 'unattended' or tag or  
24 place caution tape around any items." A finding of contempt cannot be based on such flimsy  
25 evidence, which is utterly lacking in probative value.

26 In contrast to Plaintiffs' purported "evidence of absence," the City has provided  
27 overwhelming proof of compliance. The fact that a small number of witnesses may not have  
28 been present at the right time and place to observe the City's substantial efforts is insufficient

1 to create a factual dispute regarding compliance, much less support the severe remedy of  
2 sanctions for contempt. As set forth below, the City’s evidence is overwhelming and  
3 uncontradicted. Therefore, the Court should deny Plaintiff’s Motion in its entirety.

4 **Factual Background**

5 **Procedural History.**

6 The case involves complex issues relating to the constitutional rights of unhoused  
7 persons. Plaintiff initially sought a sweeping injunction that would prohibit the City from  
8 enforcing Phoenix City Code Section 23-20(A) (“Camping Ban”), Phoenix City Code  
9 Section 23-48.01 (“Sleeping Ban”), and conducting what Plaintiffs referred to as “raids” or  
10 “sweeps” of the unsheltered community which allegedly resulted in loss of property.

11 On December 16, 2022, the Court issued an Order granting in part and denying in part  
12 the request for preliminary injunction. [Doc. 34] The Court denied large parts of the  
13 Plaintiffs’ request and ruled that the City’s enhanced cleanup plan for the area surrounding  
14 the Human Services Campus (“HSC”) downtown located near 12th Avenue and Madison,  
15 referred to by Plaintiffs as the “Zone,” could proceed as planned for December and that the  
16 City could continue to lawfully engage in its regular public health and safety activities.

17 The Order enjoined the City from: (1) enforcing its Camping and Sleeping Bans  
18 against individuals who practically cannot obtain shelter as long as there are more  
19 unsheltered individuals in the City than there are shelter beds available; (2) seizing property  
20 of the unsheltered without providing prior notice at the property’s location that the property  
21 will be seized unless the City has an objectively reasonable belief that it is abandoned, an  
22 immediate threat to public health or safety, or evidence of a crime or contraband; and (3)  
23 destroying seized property without maintaining it in a secure location for no less than 30  
24 days, absent an immediate threat to public health and safety. *Id.* So long as the City complies  
25 with the terms of the Order—which it has—the Court did not restrict the City’s ability to  
26 engage in enhanced cleanings and “engagement opportunities,” which are coordinated efforts  
27 to identify social services, provide shelter and improve sanitary conditions near the HSC.

28

1           Notice and Safeguards for Personal Property.

2           The evidence shows that the City has complied with the terms of the Order, and in  
3 fact, has gone beyond what is legally required to protect individuals' property and offer  
4 shelter and individualized services to the City's unsheltered population. First, the City has  
5 taken methodical steps to develop administrative procedures and guidelines to identify and  
6 store property belonging to unsheltered individuals, which involves coordination and  
7 cooperation through city-wide efforts. Using these guidelines, City staff have been trained in  
8 distinguishing between unattended and abandoned property. [See Ex. A, Milne Dec. ¶ 5;  
9 Milne Dec. Ex. 1, "Identification and Storage of Property Belonging to Unsheltered  
10 Individuals"] Under the City's current procedures, if property is left unattended, the City tags  
11 it and leaves the property on the street, exactly where it was left, for at least 24 hours before  
12 bringing it to storage. [Milne Dec. Ex. 1] In total, individuals have at least 30 days to retrieve  
13 abandoned property prior to disposal. *Id.* However, property can always be disposed of with  
14 consent from the owner. *Id.* These policies, procedures, and practices are in compliance with  
15 this Court's Order.

16           The City has also continued to conduct enhanced cleaning near the HSC to improve  
17 health and sanitation since the Court's Order ("Enhanced Cleanups"). [Ex. B, Hall Dec. ¶ 5]  
18 In total, the City has now conducted six Enhanced Cleanups. [Ex. 1, Milne Dec. ¶ 16] Prior  
19 to an Enhanced Cleanup, the City begins planning and coordinating well in advance—often  
20 three weeks or more before the cleaning event. [*Id.* ¶ 9] The City sets this timeline so that  
21 there is sufficient time to provide adequate notice to individuals living in the area to be  
22 cleaned, and so that the City can begin coordinating with its non-profit partners. [*Id.*]

23           May 10 "Enhanced Engagement" Event.

24           On May 10, 2023, the City conducted its first "Enhanced Engagement" event. Like  
25 previous efforts, the City offered everyone residing within a particular section of the  
26 homeless encampments near the HSC with individualized assessments to determine their  
27 individual needs, offer alternative housing placements, and allow for personal property to be  
28 stored as necessary. [Ex. B, Hall Dec. ¶ 5; Ex. C, Harris Dec. ¶ 6] Unlike prior Enhanced

1 Cleanups, the expectation for the Enhanced Engagement was that people offered these  
2 services would not return to the cleanup site. [Ex. B, Hall Dec. ¶ 5] This is legal for the City  
3 to do because of the available of shelter space that could accommodate the impacted persons.

4 The City's May 10th Enhanced Engagement focused exclusively on the area of 9th  
5 Avenue between Washington and Jefferson Streets. [*Id.*] Prior to the event, the City was able  
6 to canvas the block and get to know the individuals living there and their specific needs. [Ex.  
7 A, Milne Dec. ¶ 13; Ex. D, Huntoon Dec. ¶ 4]

8 The City began planning for the Enhanced Engagement on April 17, 2023, more than  
9 three weeks prior to the event. [Ex. A, Milne Dec. ¶ 9] On May 2, 2023, the City held a  
10 coordination meeting with its non-profit partners, as well as internal partners. [*Id.* ¶ 10] The  
11 meeting included attendees from Community Bridges, Inc. ("CBI"), HSC, Central Arizona  
12 Shelter Services ("CASS"), Andre House, and Native American Connections, as well as City  
13 departments that were critical to the effort, including the Streets Department, Neighborhood  
14 Services Department, Public Works Department, Communications Department, and the  
15 Police Department. [*Id.* ¶¶ 9-10]<sup>1</sup> During the meeting, the City's Office of Homeless  
16 Solutions ("OHS") discussed with City staff and its non-profit partners the estimated number  
17 of individuals that were living in the 9th Avenue block; resources that needed to be available  
18 in order to offer each individual an indoor shelter space on May 10; and an estimated  
19 timeline of May 10 for implementation. [*Id.* ¶ 10] The team also reviewed the procedures for  
20 unattended property and what to do if an individual were to refuse to accept shelter or move  
21 to a different location. [*Id.*]

22 Beginning on April 26, 2023, two full weeks prior to the event, City staff began its  
23 outreach efforts to notify individuals camping on the 9<sup>th</sup> Avenue block. [Ex. D, Huntoon  
24 Dec. ¶ 6; Ex. B, Hall Dec. ¶ 7] OHS staff and their nonprofit partners created an outreach  
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26 <sup>1</sup> The declarations attached to this Response demonstrate that the City more than met its legal  
27 obligations to comply with this Court's order. With additional time, and should the Court  
28 seek additional evidence from more sources, although it would be cumulative of the evidence  
submitted here, the City could provide declarations from a variety of individuals associated  
with these non-profit and internal partners to demonstrate further that the City has met its  
obligations.

1 team with individuals who are trained in trauma informed care and know how to engage  
2 unsheltered individuals to determine the pertinent information needed to provide specific shelter  
3 space and services through motivational interviewing approaches. [Ex. D, Huntoon Dec. ¶ 4]  
4 The outreach team is qualified to provide the necessary individualized assessment of a person’s  
5 specific needs and help overcome possible barriers to shelter space based on circumstances (i.e.,  
6 disabled, married, family with children, individual with a dog, sex offender status, etc.). [*Id.* ¶ 5]  
7 The outreach team went to the block every business day to hand out flyers and information  
8 about the City’s plans, discuss specific situations and needs with individuals, and begin  
9 offering shelter and services. [*Id.* ¶ 6] Of course, the plaintiffs cannot dispute any of these  
10 preliminary interactions, which also serve to debunk their uninformed conclusions about  
11 what they did not see on May 10.

12         The City’s notice stated in bold letters that “If you’re interested in seeking a shelter  
13 option, staff will be able to help transport you to an available indoor location or call 602-  
14 229-5155.” [Ex. B, Hall Dec. ¶ 6; Ex. D, Huntoon Dec. Ex. 3 “May 10 Notice Flyer”] The  
15 flyers were printed in both English and Spanish, and OHS staff, along with outreach partners  
16 from HSC and CBI, handed them directly to individuals. [Ex. D, Huntoon Dec. ¶ 6] If a tent  
17 was unoccupied, the outreach team left a flyer for the individual to retrieve upon the  
18 occupant’s return. [*Id.*]<sup>2</sup>

19         Every interaction with unsheltered individuals on the block was logged by the City’s  
20 outreach team. [Huntoon Dec. ¶ 7; Huntoon Dec. Ex. 1, “Engagement Day Spreadsheet”]  
21 Initially, there were only 17 people living on the 9<sup>th</sup> Avenue block. [Ex. D, Huntoon Dec. ¶  
22 8] However, as the City’s information spread around the unsheltered community, additional  
23 individuals migrated to the area, in part to receive services. [*Id.*]

24         For persons willing to share information with the City, the City generated case file  
25 notes in the Homeless Management Information System (“HMIS”). [*Id.*] This information  
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27 <sup>2</sup> Any suggestion in Plaintiff’s Motion that the City’s notice does not comport with the law is  
28 belied by the fact that the City had active engagement with the ACLU about the content of  
the notices, without objection to its legality, before notices were distributed.

1 allowed the City to know who was living in the area through their name and HMIS number  
2 (if applicable) and whether the individual requested or refused services or shelter. [*Id.* ¶ 7; *Id.*  
3 Ex. 1] Due to the City’s outreach efforts during this two-week period, the City was able to  
4 place 12 people into shelter space even prior to May 10. [*Id.* ¶ 9]

5 By May 10<sup>th</sup>, the City had engaged with and documented 60 people residing on the  
6 block. [Ex. B, Hall Dec. ¶ 9] The City knew that there was more than enough shelter space to  
7 accommodate everyone that may request shelter during the May 10 Enhanced Engagement  
8 event. [*Id.*] First, CASS reported that it would be able to accommodate as many people as  
9 necessary due to high availability. [Ex. A, Milne Dec. ¶ 12] Further, the City’s OHS team is  
10 constantly monitoring the City’s shelter capacity. The City gets live updates from the two  
11 shelters that the City owns or primarily funds—Washington Relief Center and Rio Fresco,  
12 which is operated by CBI. [*Id.* ¶ 11] OHS also receives daily emails from CASS and the  
13 Human Services Campus that include shelter availability. [*Id.* ¶ 11] In addition, the City has  
14 a relationship with Maricopa County and gets regular updates regarding shelter space  
15 availability—even more so in the weeks leading up to a planned cleaning event. [*Id.*]

16 On May 10, 2023, Scott Hall, the Deputy Director of OHS, arrived at the 9<sup>th</sup> Avenue  
17 block around 5:30 a.m. [Ex. B, Hall Dec. ¶ 10] As Mr. Hall oversees and coordinates the  
18 engagement efforts on behalf of the City, Mr. Hall was the first person from OHS, CBI, or  
19 HSC to arrive. [*Id.* ¶¶ 10-11; Ex. A, Milne Dec. ¶ 12] At about 6:30 a.m., the three outreach  
20 teams from OHS, CBI, and HSC arrived. [Ex. B, Hall Dec. ¶ 11] Each team had between  
21 about eight and twenty members present. [*Id.*] The primary duties of the various team  
22 members included interviewing and assessing individual needs and providing transportation  
23 to the various shelter sites with available beds. [*Id.*] When providing shelter options, the  
24 outreach teams took into consideration common barriers to shelter such as pets, partners, and  
25 property. [*Id.* ¶ 13] The fact gathering that occurred in the lead-up to the event allowed the  
26 City to perform the individualized assessments and make placements based on individualized  
27 needs. [*Id.*]

28 In addition, although the City and its partners were prepared to implement the



1 unattended property procedure, *no property was actually left unattended*.<sup>3</sup> [*Id.* ¶ 12; Ex. A,  
2 Milne Dec. ¶ 17] Some shelters have limits on the volume of personal property – which are  
3 outside the City’s control. However, no one was compelled to dispose of property to comply  
4 with such limits. The unsheltered persons were given three options: (1) take their property  
5 with them; (2) have their property stored by the City, in which case it would be accessible  
6 upon request; or (3) consent to disposal, but only if that was the unsheltered person’s  
7 voluntary choice. [Milne Dec. ¶ 18]

8 As to property which people wished to have stored, the outreach teams assisted in  
9 loading that property into clean, weatherproof City of Phoenix recycle containers. [Ex. B,  
10 Hall Dec. ¶ 12] These containers have unique serial numbers, which enable the City to tie the  
11 property in the containers to its owner. [*Id.*; *See also* Ex. D, Huntoon Dec. Ex. 2 “Storage  
12 Bin Log”] While in some instances individuals were encouraged to be judicious in what they  
13 decided to keep, the City did not provide any limits for how much an individual could store.  
14 [*Id.*] As illustration, one man used a total of five separate containers to store his personal  
15 property. [*Id.*] Staff also assisted people who did not want to go to shelters to pack and  
16 relocate their belongings. [*Id.*]

17 Furthermore, to ensure that no property was accidentally disposed of, Mr. Hall  
18 confirmed with each individual one additional time as they were leaving for shelter that  
19 anything left behind could be disposed of by the City. [*Id.*] Due to these consistent checks,  
20 the City is confident that no property was disposed of without the property owner’s  
21 permission. [*Id.*] The City acted in a peaceful, respectful, and cooperative manner, helping  
22 people organize and move their belongings, as confirmed by the direct observations of  
23 multiple City employees, a consultant on homeless solutions, and a nearby business owner.  
24 [Ex. C, Harris Dec. ¶¶ 6, 18; Ex. F, Morlan Dec. ¶¶ 5, 6]

25 By about 10:30 a.m., all the homeless individuals that had been in the Enhanced  
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27 <sup>3</sup> This is not surprising as there had been two weeks of direct engagement with the  
28 unsheltered as the outreach teams had been making contacts, notifying individuals of the  
cleaning schedule, and providing information.



1 Engagement had voluntarily gone to shelters or left the Enhanced Engagement area. [Ex. B,  
2 Hall Dec. ¶ 15] The City then commenced the cleanup process by removing items left for  
3 disposal. [*Id.*] During the course of the day, the City located a variety of dangerous items in  
4 the encampments, including drug pipes, syringes, feces, machetes, make-shift spears,  
5 covered holes, set mouse traps, and a firearm. [*Id.*] Although the City Police Department was  
6 not directly involved in the cleanup, nor were officers stationed at the site of the cleanup, Mr.  
7 Hall asked for police to recover the firearm. [*Id.*; Ex. G, Freudenthal Dec. ¶ 4] The two  
8 responding officers simply placed the firearm in a plastic bag, secured it in the back of the  
9 police vehicle and left the cleanup site in about five minutes without any further police  
10 action. [Ex. H, McCombs Dec. ¶ 3] The firearm, which was determined to be a pellet gun,  
11 was secured as found property. [*Id.*] The officers had no other interactions with any  
12 unsheltered individuals at the cleanup site except to assist an unsheltered individual with a  
13 flat tire. [Ex. G, Freudenthal Dec. ¶ 4; Ex. H, McCombs ¶¶ 3, 5; Ex. B, Harris Dec. ¶ 15]  
14 After the tire was filled, the individual thanked the officer and left for the shelter. [Ex. H,  
15 McCombs Dec. ¶ 5]

#### 16 Results of the May 10 Cleaning Event.

17 The City's planning and adherence to its procedures led to an objectively successful  
18 Enhanced Engagement event. The final engagement numbers were as follows:

- 19 • 60 individuals were contacted on the 9th Avenue block in the 2-week  
20 timeframe leading up to the Enhanced Clean Up from April 26 – May 9;
- 21 • 47 individuals accepted indoor shelter (including 1 individual who accepted  
22 treatment services). 12 of the 47 individuals accepted shelter prior to May 10;
- 23 • 8 individuals refused shelter services and relocated their belongings to other  
24 areas around HSC; and
- 25 • 5 individuals left the block after an initial engagement but prior to May 10 and  
26 did not report to the City where they were going.

27 [Ex. A, Milne Dec. ¶ 20]

28 The only concerns related to the engagement issues that were reported to the City

1 were caused by third parties outside of the City’s control. Specifically, individuals from  
2 Plaintiff Fund for Empowerment (“FFE”) were onsite during the event disseminating  
3 incorrect information and causing confusion. [Ex. B, Hall Dec. ¶ 14] Although the City fully  
4 appreciates Plaintiffs’ right to observe the Enhanced Cleanups and Engagements, the City’s  
5 efforts were impeded by FFE. For example, after Mr. Hall would speak with an unsheltered  
6 individual, Mr. Hall would often observe an individual from FFE approach that same  
7 individual. [*Id.*] Many of the unsheltered individuals would then come back to Mr. Hall and  
8 tell him that FFE had informed them that they did not have to move for seven more days.  
9 [*Id.*] Mr. Hall was then forced to re-explain that the information given by FFE was incorrect and  
10 that the City had provided two-week notice that the area was closing. [*Id.*] This happened  
11 several times throughout the morning and injected a degree of confusion and misinformation  
12 into what was otherwise an orderly process. [*Id.*]<sup>4</sup> Notwithstanding the interference, the  
13 event was a success.

#### 14 Law Enforcement Involvement Remains Limited.

15 As noted above, during the May 10 Enhanced Engagement, law enforcement was  
16 limited to only responding to calls for service for handling of a weapon and assisting in  
17 airing up a tire for an individual. Furthermore, between December 22, 2022 and May 21,  
18 2023, there have been no adult or juvenile arrests and no citations issued for charges under  
19 Phoenix City Code §§ 23-30 / 23-30A (Camping) and 23-48.01 (Lying or Sitting on Public  
20 Right-of-Way / Prohibited Use of Public Right-of-Way) in the downtown area Plaintiffs refer  
21 to as the “Zone.” [*See* Ex. I, Jarosi Dec. ¶ 4; *see also* the Reports, attached to Jarosi Dec.,  
22 Ex. 1 and 2]

23  
24 <sup>4</sup> In another example, an unsheltered individual who was moving her possessions began  
25 arguing with a cameraman from the news media. [Harris Dec. ¶ 11] After the unsheltered  
26 individual asked the cameraman to stop filming her at least twice, the cameraman told the  
27 individual he had a right to film her. [Harris Dec. ¶ 11] Later, that morning, a City consultant  
28 happened upon a conversation between the cameraman and the reporter. [Harris Dec. ¶ 11]  
The reporter was telling the cameraman that it was inappropriate to film someone who did  
not want to be filmed and he was stating it was his right to do so. [Harris Dec. ¶ 11] The City  
consultant spoke with them and told the cameraman that the woman he was filming had  
asked him to stop and his refusal was disrespectful. [Harris Dec. ¶ 11] The reporter agreed  
and said the footage would not be used. [Harris Dec. ¶ 11]

1 Future Enhanced Clean Ups and Engagement Events.

2 The City’s next planned cleaning is set for May 31, 2023 and will focus on the block  
3 of 12<sup>th</sup> Avenue between Washington and Jefferson. The City began its notice process on May  
4 17, 2023. See May 31 Cleaning Notice, Exhibit E.<sup>5</sup> The City will continue to engage with the  
5 unsheltered community, coordinate with its nonprofit partners to offer individualized  
6 assessments for shelter and services, offer adequate notice prior to cleaning the area, and  
7 safeguard personal property.

8 In short, the City has put forth substantial evidence that it is complying with the law  
9 and this Court’s Order, which Plaintiffs have rebutted only through vague and inadmissible  
10 assertions.

11 Legal Standard

12 Civil contempt is “a party’s disobedience to a specific and definite court order by  
13 failure to take all reasonable steps within the party’s power to comply.” *Reno Air Racing*  
14 *Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir.2006). It is well-settled that if a party’s  
15 actions are based upon a “good faith and reasonable interpretation of the court's order, then  
16 that party should not be held in contempt.” *Id.* (citing *Vertex Distrib., Inc. v. Falcon Foam*  
17 *Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir.1982)). A party is also immune from sanctions if it  
18 is in “substantial compliance” with only a few “technical violations.” *In re Dual-Deck Video*  
19 *Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993) The moving party has  
20 the burden of proving contempt by clear and convincing evidence. *Wolfard Glassblowing*  
21 *Co. v. Vanbragt*, 118 F.3d 1320, 1322 (9th Cir.1997). Therefore, Plaintiffs must clearly and  
22 convincingly demonstrate that the City failed to substantially comply with this Court’s  
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24 <sup>5</sup> It is disappointing that Plaintiffs opposed the City’s Motion to Continue based on their  
25 presumption (and their affirmative assertion) that because notices of a May 31 cleaning were  
26 not included with the City’s Motion, that they have not happened. That is simply not true.  
27 Frankly, we believed that our professional responsibility to provide truthful information to  
28 the Court would be enough for a motion to continue, especially on an emergency basis.  
Nonetheless, attached to this Motion is an e-mail dated May 17, 2023 with a copy of the  
notice with the revised date of cleaning from May 24 to May 31. The email also included, as  
an attachment, an internal spreadsheet that the City uses to keep track of individual notices  
provided, a version of which is attached to this Motion as Huntoon Dec. Ex. 1.

1 injunction, and that such noncompliance was not the product of the City’s good faith and  
2 reasonable interpretation of the preliminary injunction. *Id.*; *Labor/Cnty. Strategy Ctr. v. L*  
3 *A. Cnty. Metro. Transp. Auth.*, 564 F.3d 1115, 1123 (9th Cir.2009). Plaintiffs have fallen  
4 woefully short of meeting this elevated burden.

### 5 Legal Argument

#### 6 **I. PLAINTIFFS HAVE FAILED TO PROVE BY CLEAR AND CONVINCING** 7 **EVIDENCE THAT THE CITY VIOLATED THE TERMS OF THE** 8 **PRELIMINARY INJUNCTION.**

8 In an effort to meet their lofty burden for a finding of contempt, Plaintiffs have  
9 submitted a handful of self-serving declarations that are devoid of any admissible evidence  
10 of substantial noncompliance or bad faith.

11 A supporting affidavit or declaration must (1) be made on the personal knowledge of  
12 an affiant who is competent to testify to the matter stated therein; and (2) state facts that  
13 would be admissible in evidence. *Boyd v. City of Oakland*, 458 F.Supp.2d 1015, 1023  
14 (N.D.Cal.2006) (citations omitted). In other words, “[t]he matters must be known to the  
15 declarant personally, as distinguished from matters of opinion or hearsay”; “[a] declarant’s  
16 mere assertions that he or she possesses personal knowledge and competency to testify are  
17 not sufficient.” *Id.* (citing *Barthelemy v. Air Lines Pilots Ass’n*, 897 F.2d 999 (9<sup>th</sup> Cir.1990)).  
18 Rather, “a declarant must show personal knowledge and competency ‘affirmatively,’ ... for  
19 example, by the nature of the declarant’s position and nature of participation in [the] matter.”  
20 *Marceau v. I’nt’l Bhd. of Elec. Workers*, 618 F. Supp. 2d 1127, 1140 (D. Ariz. 2009).

21 In this case, Plaintiffs’ affidavits are replete with the very type of generic allegations  
22 and unsupported conjecture that courts have rejected as unreliable and lacking in probative  
23 value. As shown below, Plaintiffs’ declarations consist of vague statements, which lack  
24 sufficient supporting details, and are at best based on hearsay or rank speculation, and thus  
25 betray their lack of personal knowledge.

26 For example, Elizabeth Venable states that she “observed city workers collect  
27 property and belonging of unsheltered individuals and destroy them.” [Exhibit 3 to  
28 Plaintiff’s Motion ¶ 10] However, she offers no information indicating that this was done

1 without the unsheltered individuals' consent. As might be expected, many individuals chose  
2 to dispose of certain possessions rather than transporting them to their new place of shelter.

3 Venable also contends, in conclusory fashion, that "unsheltered individuals were not  
4 allowed to bring all of their property with them when they were displaced." [Exhibit 3 to  
5 Plaintiff's Motion ¶ 21] This statement is particularly deficient from an evidentiary  
6 perspective because Venable makes no attempt whatsoever to identify the source of this  
7 information, much less provide admissible support.

8 Venable also makes the vague and unsupported statement that: "Based on my  
9 conversations, they City did not conduct individualized assessments before offering them  
10 shelter." [Exhibit 3 to Plaintiff's Motion ¶ 20] Among other flaws, Venable fails to establish  
11 that she is competent to opine on the legal sufficiency of an assessment. Furthermore, she  
12 offers no indication that she has personal knowledge of the City's assessment process.  
13 Instead, she relies on purported conversations with unidentified persons, which are offered  
14 for the truth of the matter asserted and, therefore, constitute inadmissible hearsay.

15 Venable also claims that she did not see any notices or the tagging of property.  
16 [Exhibit 3 to Plaintiff's Motion ¶ 13, 24-26] But barring powers of omnipresence, she is only  
17 competent to testify as to the actions and postings that took place in her presence. The fact  
18 that she did not observe something does not mean it did not occur, and in any event, as  
19 described above, the City's process in this case resulted in property either being placed in  
20 bins for storage or left behind with the intent that it be disposed of. In other words, she has  
21 insufficient personal knowledge to make sweeping allegations of non-compliance. And, the  
22 City has provided evidence of its compliance with the enhanced cleaning protocol, as set  
23 forth in the City's factual background.

24 At most, Venable's declaration confirms that unsheltered persons were provided  
25 housing, which all should be able to agree is a positive development. While Plaintiff  
26 questions whether such housing meets each individual's long-term needs, her concerns are  
27 based on unsupported conjecture, such as speculating that at Central Arizona Shelter  
28 Services, "most people are kicked out after three months." [Exhibit 3 to Plaintiff's Motion ¶

1 17] Moreover, she failed to identify a single person who was denied shelter due to a  
2 disability or other protected circumstance. In other words, Venable’s declaration does  
3 nothing to advance Plaintiffs’ request for a finding of contempt.

4 The declaration of Ronnie Lee Massingille is plagued by similar deficiencies. As an  
5 initial matter, Plaintiffs use Massingille’s statements to give the misleading impression that  
6 the City disposed of his property during the May 10 cleaning and his observations are not  
7 based on the events of May 10, 2023. Plaintiff’s quote Massingille as saying, “The few  
8 belongings you have when you’re unhoused are some of the only things that make your life a  
9 little better and allow you to move yourself forward. It’s so degrading to watch the City  
10 throw away your belongings and know you have no control.” [Plaintiff’s Motion at 6] In the  
11 Motion, however, Plaintiffs neglect to mention that Massingille has resided in a hotel since  
12 January 2023 and, therefore, he was not personally impacted by the May 10 cleaning.  
13 [Exhibit 4 to Plaintiff’s Motion ¶ 5] Massingille’s statements about losing property during  
14 prior cleanings, as well as his allegations about previous alleged “sweeps,” have no probative  
15 value regarding the events of May 10, 2023, particularly since the City is operating under a  
16 new enhanced cleaning protocol and the Court’s Order.<sup>6</sup>

17 The remainder of Massingille’s declaration consists of inadmissible hearsay, since it  
18 is based on the alleged statements of unidentified persons which are offered for the truth of  
19 the matters asserted. Thus, the Court should disregard Massingille’s declaration in its  
20 entirety.

21 The declaration of Eric Elmore is also replete with hearsay. Elmore relies principally  
22 on conversations he allegedly overheard or purported statements by unsheltered persons,  
23 none of which is admissible. In a recurring theme, Elmore also claims that he did not see the  
24 City tagging property. But again, he has no personal knowledge regarding events occurring  
25 outside his line of sight. Furthermore, if an unsheltered person consented to the destruction  
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27 <sup>6</sup> The City does not concede the Massingille’s property was destroyed at any time. In any  
28 event, an allegation of prior destruction at some unidentified time is not clear and convincing  
evidence that the City violated other persons’ rights on May 10.



1 of unwanted property, there would be no need for tagging. Finally, he offers unfounded  
2 opinions and passive voice conclusions that are untethered to any factual support, such as  
3 making the blanket allegation that “Numerous unsheltered individuals had to leave behind  
4 possessions in order to obtain temporary shelter.” [Exhibit 5 to Plaintiff’s Motion ¶ 19] This  
5 is hardly the type of competent testimony based on personal knowledge necessary to support  
6 sanctions.

7 The declaration of Eric Brickley likewise relies on the same type of inadmissible  
8 speculation and hearsay. Finally, the declaration of Doug Maloney focuses on the property  
9 of an unhoused person named Brian, which Maloney claims was relocated under unknown  
10 circumstances more than two weeks before the May 10 cleaning. [Exhibit 7 ¶¶ 16-20] Thus,  
11 the declaration is both speculative and unrelated to the events in question.

12 While Plaintiffs claim that there was rampant unauthorized destruction of property,  
13 coercion under threat of arrest, lack of sufficient notice, and other impermissible conduct  
14 during the May 10 cleaning, their agenda-driven evidence falls flat. Tellingly, they failed to  
15 submit a single declaration (or any supporting evidence) from any unsheltered person whose  
16 rights were allegedly violated on May 10.

17 In contrast, the City’s undisputed evidence establishes, among other things, that the  
18 City has done the following:

- 19 1. Engaged respectfully with unsheltered individuals and provided individualized  
20 assessments to determine if there is shelter space available.
- 21 2. Prohibited law enforcement from criminally or civilly enforcing the Camping  
22 or Sleeping Bans when there is no shelter space available.
- 23 3. Provided proper notices of upcoming cleaning events.
- 24 4. Provided storage of unattended property; and
- 25 5. Kept careful records of all engagements made, notices given, services  
26 provided, and property stored.

27 [Ex. B, Hall Dec. ¶¶ 5, 6, 12; Ex. C, Harris Dec. ¶ 6; Ex. I, Jarosi Dec. ¶ 4; *Id.* Ex. 1 and 2;  
28 Ex. E; Ex. A, Milne Dec. ¶ 18; Ex. D, Huntoon Dec. Ex. 1 and 2]

29 In other words, the City has done what the law requires and what the Court has  
30 ordered it to do (and more). Indeed, multiple witnesses, including direct participants in the



1 May 10 cleanup have confirmed, without contradiction, that the City transported people and  
2 their personal belongings to shelter and stored items that the unsheltered could not move.  
3 [Ex. C, Harris Dec. ¶¶ 7-8, 10, 14-18; Ex. F, Morlan Dec. ¶¶ 4-11] This direct, firsthand  
4 testimony stands in stark contrast to the speculative, ill-informed, and inadmissible  
5 statements offered by Plaintiffs.

6       Insofar as Plaintiffs have failed to establish by clear and convincing evidence any  
7 violation of the preliminary injunction, there is no basis for expanded restrictions on the  
8 City's ability to conduct lawful, orderly, and respectful cleanings and relocation to available  
9 shelter space.

10       The bottom line is that the City has taken painstaking measures to conduct cleanings  
11 and engagements in a manner that not only meets but exceeds the requirements of the  
12 preliminary injunction. The City has invested countless hours planning each step, reaching  
13 out to members of the impacted block (even to the point that the some City employees are  
14 able to identify virtually all of the inhabitants by name), developing trust and a rapport,  
15 counseling people on various options, finding shelter to best address each person's specific  
16 needs, assisting these individuals in relocating (including providing transportation and  
17 helping to move property), and storing or disposing of other property in accordance with  
18 each person's expressed wishes. The City is proud of its efforts, which it sincerely believes  
19 has made life better for at least a small number of individuals. Homelessness is a vexing  
20 problem that has challenged cities across the United States. The City believes that the steps  
21 it has taken, and along with its future plans for expanded shelter and services, constitute a  
22 real achievement. Candidly, the City cannot understand how Plaintiffs can present such a  
23 slanted, unfair, ill-informed portrayal of the City's efforts. Although the City would look  
24 forward to the opportunity to tell its story to the Court, the reality is that the evidence is so  
25 lacking in Plaintiffs' Motion, and the evidence included with this Response is so extensive,  
26 that the Court should vacate tomorrow's hearing as unnecessary.

27  
28

**CONCLUSION**

For the foregoing reasons, the City respectfully requests the Court deny Plaintiffs' Request for Modification of Preliminary Injunction and Motion for Order to Show Cause. This Court has already issued a preliminary injunction to ensure the rights of the unsheltered are respected and the City has conducted itself in accordance with the same.

RESPECTFULLY SUBMITTED this 25th day of May 2023.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 25, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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