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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LE VAN HUNG, et al.,

Plaintiffs,

v.

LIBBY SCHAAF, et al.,

Defendants.

Case No. [19-cv-01436-CRB](#)

**ORDER GRANTING
PRELIMINARY INJUNCTION**

Plaintiffs are individuals who are currently experiencing homelessness and reside in an encampment in Union Point Park in Oakland, California (“the park”). Motion (dkt. 17) at 1. Defendants are the City of Oakland, the Oakland Department of Public Works, Oakland Major Libby Schaaf, and Oakland’s Assistant to City Administrator, Joe DeVries (collectively, “Defendants”). Plaintiffs oppose the City’s plan to “clean and clear” the park—that is, remove the homeless encampment. See Compl. (dkt. 1); accord Opp. at 1. Now before the Court is Plaintiffs’ Motion for a Preliminary Injunction, see Motion. Defendants have filed an opposition, Opp. (dkt. 31), and Plaintiffs have, with the assistance of counsel, see Notices of Appearance (dkt. 29-30), filed a Reply, see Reply (dkt. 36).

The Court holds as follows. The parties are hereby referred to Magistrate Judge Ryu on the issues of (1) the City’s voicemail policies and practices regarding the phone number listed in the Vacate Notices and (2) the City’s policies regarding shelter “availability”. The Court is hopeful that the parties can reach agreement on these issues. The Court further orders that, after the parties have reached resolution on the two above-listed issues, the City may clean and clear the park, provided that it fully complies with its stated policies,

United States District Court
Northern District of California

1 set out in Exhibits A and B to the Dunlap Declaration (dkt. 31-2), including but not limited
 2 to providing a new Notice to Vacate at least 72 hours in advance, offering shelter beds
 3 residents to be evicted, providing notice and storage of any property collected in the clean
 4 and clear, and otherwise adhering to the City’s policies as well as all representations made
 5 in its filings and at the April 19, 2019 hearing on this Motion.

6
 7 **I. BACKGROUND**

8 **A. Factual Background**

9 Plaintiffs are four individuals who have lived at an encampment in Union Point
 10 Park’s Eastern/Southern parking lot for varying numbers of months. Compl. at 4. Union
 11 Point Park is located at 2311 Embarcadero in Oakland, California. Opp. at 10. It opened in
 12 2005 and is operated by the City of Oakland. Id. Situated along the waterfront, the park
 13 features a playground, sculpture, grass lawns, two parking lots, benches, restrooms, and
 14 barbeque facilities. Id. A number of small businesses and a middle school are located
 15 nearby. Id. at 10, 12.

16 Around 2012, homeless encampments began to appear in Union Point Park. Id. at
 17 11. Neither party appears to know precisely how many individuals currently reside at
 18 Union Point Park. See Opp. at 14 (“Currently, the number of people at Union Point Park is
 19 unknown. Two small makeshift structures, debris and approximately 15 RVS remain in
 20 this lot.”); Reply at 9 (“According to the City’s count, well more than eight people resided
 21 in Union Point Park as of March 31, 2019, including residents in 15 RVs in the
 22 Southern/Eastern Lot.”).

23 After several attempts to “clean and clear” Union Point Park in 2018, Defendants
 24 determined that the conditions remained hazardous to both park users and encampment
 25 residents, and decided to notice and enforce an encampment closure. Opp. at 14; DeVries
 26 Dec’l ¶ 29 (dkt. 31-1); Dunlap Dec’l Exh. H. On March 15, 2019, Defendants posted a
 27 notice to vacate the property (“Vacate Notice”) at the Eastern/Southern parking lot where
 28 Plaintiffs reside. Dunlap Dec’l Exh. H. The Vacate Notice states that the site has been

1 deemed uninhabitable and directs all persons to “vacate this site and remove any personal
2 belongings.” Dunlap Dec’l Exh. C. It states that on the specified time and date, Public
3 Works crews will remove and store any property left at the site. Id. It emphasizes that
4 “property that is unsafe or hazardous to store will be immediately discarded.” Id. It also
5 lists a phone number to call with questions or concerns. Id.

6 Oakland has in place policies governing the closure of homeless encampments. Two
7 of these policies are the Encampment Management Policy, Dunlap Dec’l Exh. A, and the
8 Standard Operating Procedure. Id. Exh. B. The former discusses at a high level of
9 generality the City’s goals and strategies for addressing homelessness, id. Exh. A; the latter
10 establishes the concrete steps the City says that it takes in “remov[ing] homeless
11 encampments from the public right-of-way and on City owned property.” Id. Exh. B at 1.
12 The policies provide that when the City decides to clear a homeless encampment, it first
13 posts a Vacate Notice at least 72 hours in advance of that action. Dunlap Dec’l ¶¶ 10-12;
14 id. Exh. B at 3. The Standard Operating Procedure then sets out the following procedures:

15 5. The [Public Works Agency] PWA shall return to the
16 site on the specified date to remove any belongings left at the
17 encampment site, and request the assistance of the Oakland
18 Police Department (OPD) if necessary.

19 6. City personnel shall not prevent occupants from
20 retrieving their belongings before vacating the encampment site.

21 7. City personnel shall not confiscate or remove
22 belongings from site when the occupant is present, absent
23 reasonable belief that the belongings are an immediate threat to
24 public health and safety or are evidence of crime or contraband.

25 8. PWA staff shall take photographs of the encampment
26 site prior to the cleanup.

27 9. PWA staff shall immediately dispose of belongings
28 that are considered to be clearly trash or are unsafe for storage,
such as food or food wrappers, soiled items, or used personal
hygiene items

10.PWA staff will collect, bag, and label personal
belongings left at the site. “Notice of Collected Property” will
be posted where the original “Notice to Vacate” was previously
posted, and will contain the PWA Call Center telephone number
. . . .

11. PWA shall itemize the belongings collected and
include the location, date, and time of collection on the
itemization form.

12. The collected belongings will be stored at PWA
facility for at least ninety (90) days.

1 Dunlap Dec’l Exh. B at 2-3. The City also states that it offers shelter beds and resources to
2 individuals in encampments prior to the closure. DeVries Dec’l ¶ 29.

3 Plaintiffs contend that the City does not comply with these policies. Reply at 7-10.
4 They state that the voicemail belonging to the number provided on the Property Notice is
5 “frequently full,” and thus they are unable to leave a message to ask about the City’s plans.
6 Reply at 9. Plaintiffs also state that they were never contacted by City outreach workers or
7 offered shelter beds. Reply at 7; Veta Dec’l ¶ 9 (dkt. 39); Burns Dec’l ¶ 5 (dkt. 43);
8 Huffman Dec’l ¶ 6 (dkt. 41).

9 Plaintiffs also claim that, despite the City’s policies to the contrary, the City has a
10 “pattern and practice” of “on-site property destruction.” Reply at 8; Miralle Dec’l ¶ 14
11 (dkt. 40); Johns Dec’l Exh. C (dkt. 37) (Ewing Dec’l). In declarations, Plaintiffs and other
12 homeless Oakland residents report that “Oakland police and Department of Public Works
13 often dispose[] of all property present, using machinery and a trash compactor.” Reply at
14 10; Veta Dec’l ¶ 5; Burns Dec’l ¶ 3; Miralle Dec’l ¶ 14. They thus contend that, based on
15 the City’s past practices, the City will fail to follow its policies and destroy their property
16 in the clean and clear the park at issue here. Plaintiffs also contend that the City does not
17 follow its practices after clearing an encampment, because the City “does not post the
18 Notice of Collected Property at the site of the cleared encampment.” Reply at 9; Veta
19 Dec’l ¶ 6.

20 On March 15, 2019, the City of Oakland’s Public Works Department informed
21 Plaintiffs, through a posted notice, that on March 20, 2019, it would close the encampment
22 and remove and store property left at the site at the time of cleanup. Dunlap Dec’l. Exh. J.
23

24 **B. Procedural Background**

25 On March 19, 2019—one day before the City’s proposed closure of the park,
26 Plaintiffs filed the instant case and both a Motion for a Temporary Restraining Order and
27 the instant Motion for a Preliminary Injunction. Compl. at 3. Plaintiffs claim that the
28 contemplated closure would violate their Eighth and Fourteenth Amendment rights. See

1 Reply at 2. On March 19, 2019, the Court granted a temporary restraining order (“TRO”)
2 enjoining Defendants from carrying out the closure until April 2, 2019. TRO Order (dkt.
3 18).

4 Defendants initially began the planned clean and clear on March 19. Opp. at 14.
5 They allege that the crews were unaware of the TRO. Id. When Defendants learned of the
6 Court’s order, they ceased all work on the closure. Id. at 14-15. No individuals were
7 arrested or cited and no property was taken for storage or discarded during the aborted
8 operation. Id. at 15.

9 The Court held a hearing on the instant Motion on April 19, 2019. At that hearing,
10 the parties informed the Court that, although the TRO had expired on April 9, 2019—ten
11 days prior to the hearing—Defendants had agreed to follow the terms of the TRO until this
12 Court had issued its decision on the Motion for a Preliminary Injunction. See Minute Entry
13 (dkt. 44).

14 15 **II. DISCUSSION**

16 A preliminary injunction should issue where the plaintiff establishes that “he is
17 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
18 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
19 the public interest.” See Rodriguez v. Robbins, 715 F.3d 1127, 1133 (9th Cir. 2013). The
20 Ninth Circuit has adopted a “sliding scale approach” such that “serious questions going to
21 the merits and a balance of hardships that tips sharply towards the plaintiff can support
22 issuance of a preliminary injunction, so long as the plaintiff also shows that there is a
23 likelihood of irreparable injury and that the injunction is in the public interest.” Alliance
24 for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011). The “[l]ikelihood of
25 success on the merits ‘is the most important’ Winter factor; if a movant fails to meet this
26 ‘threshold inquiry,’ the court need not consider the other factors.” Disney Enterprises, Inc.
27 v. VidAngel, Inc., 869 F.3d 848, 856 (9th Cir. 2017). Moreover, “a preliminary injunction
28 is customarily granted on the basis of procedures that are less formal and evidence that is

1 less complete than in a trial on the merits.” Univ. of Texas v. Camenisch, 451 U.S. 390,
2 395 (1981).

3 **A. Likelihood of Success on the Merits**

4 Plaintiffs rely primarily on two recent Ninth Circuit cases, Lavan v. City of Los
5 Angeles, 693 F.3d 1022 (9th.Cir. 2012), and Martin v. City of Boise, 902 F.3d 1031 (9th
6 Cir. 2018), amended and superseded on denial of reh’g, 2019 WL 1434046 (Apr. 1, 2019).
7 In Lavan, the Ninth Circuit held that the Fourteenth Amendment’s Due Process Clause
8 “protect[s] homeless persons from government seizure and summary destruction of their
9 unabandoned, but momentarily unattended, personal property.” 693 F.3d at 1024. Martin
10 held that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting,
11 sleeping, or lying outside on public property for homeless individuals who cannot obtain
12 shelter.” 902 F.3d at 1048.

13 Building on these cases, Plaintiffs argue that the proposed clean and clear would:
14 (1) violate the Fourteenth Amendment because the City does not provide adequate notice
15 and has a practice of destroying property on site and (2) would violate the Eighth
16 Amendment because it carries a risk that they will be arrested in violation of Lavan. Reply
17 at 5-13.

18 The Court addresses these claims individually.

19 **1. Eighth Amendment**

20 The Eighth Amendment’s bar against cruel and unusual punishments
21 “circumscribes the criminal process in three ways.” Ingraham v. Wright, 430 U.S. 651, 667
22 (1977). “First, it limits the type of punishment the government may impose; second, it
23 proscribes punishment “grossly disproportionate” to the severity of the crime; and third, it
24 places substantive limits on what the government may criminalize.” Martin, 902 F.3d at
25 1046. Applying this standard to a Boise city ordinance that made it a misdemeanor to use
26 “any of the streets, sidewalks, parks, or public places as a camping place at any time,” the
27 Ninth Circuit reached the “narrow” holding that “so long as there is a greater number of
28 homeless individuals in [a jurisdiction] than the number of available beds [in shelters],” the

1 jurisdiction cannot prosecute homeless individuals for ‘involuntarily sitting, lying, and
 2 sleeping in public.’ That is, as long as there is no option of sleeping indoors, the
 3 government cannot criminalize indigent, homeless people for sleeping outdoors, on public
 4 property, on the false premise they had a choice in the matter.” Martin, 902 F.3d at 1048
 5 (quoting Jones v. City of Los Angeles, 444 F.3d 1118, 1138 (9th Cir. 2006), vacated, 505
 6 F.3d 1006 (9th Cir. 2007) (alterations in original)). However, the Ninth Circuit also
 7 cautioned that Martin “in no way dictate[d] to the City that it must provide sufficient
 8 shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . .
 9 at any time and at any place.” Id. (quoting Jones, 444 F.3d at 1138 (second alteration in
 10 original)).

11 Plaintiffs argue that they are likely to succeed on the merits of their Eighth
 12 Amendment claim under Martin because (1) Oakland has insufficient beds for its residents
 13 that are currently experiencing homelessness and (2) “[t]he currently contemplated closure
 14 threatens plaintiffs with prosecution for their involuntary act of residing in public.” Reply
 15 at 5-6.

16 Assuming favorably for Plaintiffs that they are correct about the availability of
 17 Oakland’s shelter beds, they are still unlikely to succeed on the merits of this claim. And
 18 that is so for the simple reason that a clean and clear of the park does not require the arrest
 19 of Plaintiffs—or, indeed of any homeless person residing at the park. As Judge Gilliam
 20 explained in a case in which plaintiffs experiencing homelessness in Oakland sought to
 21 enjoin a clean and clear of a different homeless encampment in Oakland:

22 Plaintiffs are not faced with punishment for acts inherent to their
 23 unhoused status that they cannot control Plaintiffs’ theory
 24 would therefore require the Court to extend the right described
 25 in Martin well beyond the parameters set by the Ninth Circuit.
Martin does not establish a constitutional right to occupy public
 property indefinitely at Plaintiffs’ option.

26 Miralle v. City of Oakland, 2018 WL 6199929, at *2 (N.D. Cal. Nov. 28, 2018); see also
 27 Sullivan v. City of Berkeley, 2017 WL 4922614, at *4 (N.D. Cal. Oct. 31, 2017) (holding
 28 that plaintiffs were unlikely to succeed on the merits of their claim that being moved from

1 BART property would violate the Eighth Amendment because BART was entitled to
2 enforce trespass laws on its property).

3 The Court is fully persuaded by the reasoning of Miralle and Sullivan: while Martin
4 limits localities' ability to arrest their homeless residents for the act of living in the streets
5 when there is nowhere else for them to go, it does create a right for homeless residents to
6 occupy indefinitely any public space of their choosing. See Miralle, 2018 WL 6199929, at
7 *2; Sullivan, 2017 WL 4922614, at *4. The Court therefore concludes that Plaintiffs have
8 not shown a likelihood of success on the merits of their Eighth Amendment claim. See
9 Rodriguez, 715 F.3d at 1133.

10 11 **2. Fourteenth Amendment Procedural Due Process**

12 Plaintiffs' other argument arises under the Fourteenth Amendment's Procedural
13 Due Process Clause. The Ninth Circuit has held that a person experiencing homelessness
14 does not abandon her property by leaving it on the sidewalk, and thus that property is
15 protected by the Due Process Clause. Lavan, 693 F.3d at 1031. So, "[b]ecause homeless
16 persons' unabandoned possessions are 'property' within the meaning of the Fourteenth
17 Amendment, the City must comport with the requirements of the Fourteenth Amendment's
18 due process clause if it wishes to take and destroy them." Id. at 1032. Lavan held that Los
19 Angeles' policy of seizing and destroying property created a likelihood of success on the
20 merits because the "City's practice of on-the-spot destruction of seized property presents
21 an enormous risk of erroneous deprivation, which could likely be mitigated by certain
22 safeguards such as adequate notice and a meaningful opportunity to be heard." Id. at 1032-
23 33 (internal citation and alteration omitted).

24 In Miralle, the plaintiffs argued that Oakland had a "pattern and practice of
25 unlawfully seizing and destroying property during the process of clearing homeless
26 encampments." 2018 WL 6199929, at *3. Judge Gilliam was unpersuaded, because
27 Oakland's "Standard Operating Procedure provides adequate notice and opportunity for
28 Plaintiffs to be heard before property is seized." Id. While Judge Gilliam recognized that

1 the some plaintiffs reported that the City had destroyed their property in violation of that
 2 policy, he concluded that “given the City’s representation that it will follow its stated
 3 procedures, and the notice already provided by the City,” as well as the City’s
 4 representation to the court “that it will follow its stated procedures,” plaintiffs were not
 5 likely to succeed on the merits of their Due Process claim. Id. However, he noted that the
 6 practices that the plaintiffs alleged, “if carried out at [the encampment at issue], would
 7 raise serious questions with respect to Plaintiffs’ still-pending Fourteenth Amendment
 8 claims.” Id. He thus ordered that “[s]hould the City choose to renew its efforts to remove
 9 Plaintiffs from the [] site, it must provide a new notice to vacate and otherwise comply
 10 with all of its Policies and Procedures, including by providing the new notice at least 72
 11 hours in advance, offering shelter beds to each of the 13 [site’s] residents evicted,
 12 providing notice and storage of collected property, and otherwise adhering to all
 13 representations made in its filings and at the [preliminary injunction] hearing.” Miralle,
 14 2018 WL 6199929, at *4.

15 Plaintiffs now contend that the City did, in fact, seize and destroy property at that
 16 encampment in violation of both the City’s Standard Operating Procedure and the
 17 representations that the City made before Judge Gilliam. Reply at 8-10. They thus urge that
 18 the same result is likely here. Id.

19 Plaintiffs also argue that the notice the City has provided was inadequate. Reply at
 20 8-9. The City posted only one Vacate Notice, on March 15, 2019. Dunlap Dec’1 Exh. C.
 21 The notice lists a phone number for anyone who has “any questions and/or concerns.” Id.
 22 Plaintiffs argue that the phone number listed on the Notice to Vacate “leads to a voicemail
 23 that is frequently full,” and the Notice provides no other method to access information
 24 about how to retrieve collected property. Reply at 8-9. They also allege that the City does
 25 not follow its policy of putting up a Notice of Collected Property after cleaning and
 26 clearing an encampment to alert former residents how to retrieve their belongings. Reply at
 27 9; Veta Dec’1 ¶ 6. Instead, they argue, the City’s practice is to “dispose[] of all property
 28 present, using machinery and a trash compactor.” Reply at 10; Veta Dec’1 ¶ 5; Burns Dec’1

¶ 3; Miralle Dec’l ¶ 14.

The Court agrees with Plaintiffs that, as Judge Gilliam put it, if the City does behave as Plaintiffs allege, rather than complying with its policies, that behavior “would raise serious questions with respect to Plaintiffs’ still-pending Fourteenth Amendment claims.” Miralle, 2018 WL 6199929, at *3. The Court thus concludes that Plaintiffs have shown a likelihood of success on the merits of their due process claim if the City cleans and clears the encampment at the park without complying with its existing policies. See Dunlap Dec’l Exh. A, B; see also Lavan, 693 F.3d at 1032 (“Because homeless persons’ unabandoned possessions are ‘property’ within the meaning of the Fourteenth Amendment, the City must comport with the requirements of the Fourteenth Amendment’s due process clause if it wishes to take and destroy them.”).¹

Plaintiffs also urge, however, that the policies, even if complied with, are not constitutionally adequate because the only notice posted is the one-page Vacate Notice, which does not provide a meaningful notice opportunity because the voicemail the phone number leads to is frequently full. Reply at 9. The City’s stated policy does not explain whether or how often the voicemail is checked or emptied, or whether the phone line the Vacate Notice connects to is operated by a City employee, or during what hours it is operated. See Dunlap Dec’l Exh. A, B. The parties dispute what the phone line policy is and whether it is adequate. See Reply at 9; Opp at 21-22.

The parties also dispute whether there is adequate shelter space available to park residents. See Reply at 5; Opp. at 19. They appear to dispute both the number of available

¹ In their Reply, for the first time, Plaintiffs argue for the first time that the clean and clear would violate the Fourteenth Amendment’s Substantive Due Process Clause, in addition to the Procedural Due Process Clause, because the City would be “deliberately indifferent” to the dangers it would create to Plaintiffs by forcing them from the relative safety of the encampment. Reply at 11-13; cf. Sanchez v. City of Fresno, 914 F. Supp. 2d 1079, 1102 (E.D. Cal. 2012). The Court takes no view of the merits of this argument, and need not, because the Court follows “[t]he general rule . . . that [parties] cannot raise a new issue for the first time in their reply briefs.” State of Nev. v. Watkins, 914 F.2d 1545, 1560 (9th Cir. 1990) (United States v. Birtle, 792 F.2d 846, 848 (9th Cir. 1986) (first and second alterations in original)); see also U.S. ex rel. Giles v. Sardie, 191 F. Supp. 2d 1117, 1127 (C.D. Cal. 2000) (“It is improper for a moving party to introduce new facts or different legal arguments in the reply brief than those presented in the moving papers.”).

1 beds in the shelters and what it means for a shelter to be “available”—Plaintiffs contend
 2 that Oakland’s shelter policy means that the shelter space is functionally unavailable
 3 because it would mean Plaintiffs would have to abandon the majority of their belongings
 4 and even their pets to access only a short-term shelter stay. See Reply at 5 n.6.

5 As the Court discussed with the parties at the hearing on April 19, 2019, the Court
 6 directs the parties to seek the assistance of Judge Ryu as to (1) the Vacate Notice policies
 7 and (2) shelter availability policies. The Court is hopeful the parties can reach resolution
 8 on these issues.

9
 10 **B. Irreparable Harm**

11 Having cleared the “most important” preliminary injunction factor, see Disney
 12 Enterprises, Inc., 869 F.3d at 856, Plaintiffs easily satisfy the next factor: irreparable harm.
 13 See Rodriguez, 715 F.3d at 1144. Even if the loss of a home and one’s property were not
 14 an irreparable harm—and the City does not appear to contest that it would be, see Opp. at
 15 25-26—the Ninth Circuit has held that “an alleged constitutional infringement will often
 16 alone constitute irreparable harm.” Monterey Mech. Co. v. Wilson, 125 F.3d 702, 715 (9th
 17 Cir. 1997) (quoting Associated General Contractors v. Coalition For Economic Equity, 950
 18 F.2d, 1401, 1412 (9th Cir. 1991)). If the City is allowed to clear the encampment in
 19 noncompliance with its policies, see Dunlap Dec’l Exhs. A, B, and destroy Plaintiffs’
 20 property, as Plaintiffs allege, Plaintiffs would suffer irreparable harm.

21
 22 **C. Balance of Equities**

23 Plaintiffs argue that the balance of the equities tip in their favor because, while they
 24 recognize that the City has an interest in “preserving the park, protecting children walking
 25 to school, preventing crime, and catering to local businesses,” it has not “demonstrate[d]
 26 that the removal of this homeless encampment meets these interests,” or that “children feel
 27 unsafe, let alone are unsafe, walking to school.” Reply at 13-14. The Court is mindful of
 28 the City’s interests in ensuring that all residents have full and safe use of the park and

1 surrounding area. However, the balance of the equities tips of favor of Plaintiffs: they risk
2 losing not only their homes and sources of safety, but their community and their
3 possessions if the City cleans and clears the park without complying with its policies.

4 5 **D. Public Interest**

6 As to the final Winter factor, the City urges that it “must not be prevented from
7 exercising its municipal authority to close the encampment, clean and clear the lot, abate
8 hazardous conditions, and restore health and safety to the community.” Opp. at 26-27. But
9 nothing about the preliminary injunction order Plaintiffs seek prevents the City from
10 cleaning and clearing the area or “abat[ing] hazardous conditions,” id. The City does not
11 contend that clearing the park is the only manner in which it can seek to address the health
12 and safety of the community. See Opp. at 26-27. Moreover, of course, the residents of the
13 park are members of the community, and their interests, too, must be included in assessing
14 the public interest. Nor does the Court’s order prevent the City from cleaning the park in
15 compliance with its policies, see Dunlap Dec’l Exh. A, B, once the parties have reached
16 resolution on the two subsidiary issues of the City’s phone policies and shelter availability
17 with Judge Ryu. The Court thus finds that the public interest weighs in Plaintiffs’ favor.

18 19 **III. CONCLUSION**

20 For the foregoing reasons, the Court concludes that the Plaintiffs have met their
21 burden to show that a preliminary injunction should issue to enjoin the City from clearing
22 the park in a manner that violates its stated policies. The Court thus orders as follows:

23 The parties are referred to Judge Ryu on the issues of (1) the City’s voicemail
24 policies and practices regarding the phone number listed in the Vacate Notices and (2) the
25 City’s policies regarding shelter “availability”. The Court is hopeful that the parties can
26 reach agreement on these issues.

27 The Court further orders that, after the parties have reached resolution on the two
28 above-listed issues, the City may clean and clear the park, provided that it fully complies

1 with its stated policies, including but not limited to providing a new Notice to Vacate at
2 least 72 hours in advance, offering shelter beds residents to be evicted, providing notice
3 and storage of any property collected in the clean and clear, and otherwise adhering to the
4 City's policies, set out in Exhibits A and B to the Dunlap Declaration (dkt. 31-2), as well
5 as all representations made in its filings and at the April 19, 2019 hearing on this Motion.

6
7 **IT IS SO ORDERED.**

8 Dated: April 23, 2019



9 CHARLES R. BREYER
10 United States District Judge

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United States District Court
Northern District of California