SCOTT E. HUBER, Bar No. 227196
shuber@colehuber.com
RONALD J. SCHOLAR, Bar No. 187948
rscholar@colehuber.com
TYLER J. SHERMAN, Bar No. 343567
tsherman@colehuber.com
COLE HUBER LLP
2281 Lava Ridge Court, Suite 300
Roseville, California 95661
Telephone: (916) 780-9009
Facsimile: (916) 780-9050

Attorneys for Defendants, City of Chico and City of Chico Police Department

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BOBBY WARREN; ANDY LAMBACH; JONATHON WILLIAMS; MICHAEL SAMUELSON; TRACY MILLER; TONA PETERSON; CAROL BETH THOMPSON; CHRISTA STEVENS,

Plaintiffs,

v.

CITY OF CHICO; CITY OF CHICO POLICE DEPARTMENT,

Defendants.

Case No. 2:21-CV-00640

NOTICE OF MOTION AND MOTION OF DEFENDANTS CITY OF CHICO AND CITY OF CHICO POLICE DEPARTMENT FOR RELIEF FROM FINAL JUDGMENT OR ORDER PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60; OR, IN THE ALTERNATIVE, TO MODIFY SETTLEMENT AGREEMENT

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

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on **October 6, 2025, at 1:30 p.m.**, or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Judge Dale A. Drozd, located in the United States Courthouse, 501 I Street, Sacramento, CA 95814 in Courtroom 4 on the 15th Floor, Defendants CITY OF CHICO and CITY OF CHICO POLICE DEPARTMENT (collectively "City" or "Defendants") will and hereby do move this Court for RELIEF FROM FINAL JUDGMENT OR ORDER PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60.

PLEASE TAKE FURTHER NOTICE THAT this Motion is made upon the following grounds. Pursuant to Federal Rule of Civil Procedure 60, the Settlement Agreement and final order incorporating the Agreement are subject to challenge at any time for voidness. The Agreement creates and affords class-relief by extending relief beyond the named Plaintiffs to *all* "Homeless Persons." But no class was ever certified, as is required under Federal Rule of Civil Procedure 23 for class-based settlements. In the absence of class certification, no exception to mandatory requirements of personal jurisdiction or to limitations of relief to the named parties was ever triggered. The Court was thus required to have personal jurisdiction of each "Homeless Person" individually, and each "Homeless Person" was required to individually sue Defendants City of Chico and City of Chico Police Department. Nor was there inquiry or proof that any other "Homeless Person" had an injury for which Defendants are responsible, thus there was no inquiry or proof of whether any other person had standing to sue Defendants; the absence of standing is a further jurisdictional bar to relief. Pursuant to Federal Rule of Civil Procedure 60, the Agreement and final order are void for jurisdictional error.

The Agreement and final order are also void for jurisdictional error because the Agreement unlawfully divests Defendants' police power. Among other things, the Agreement inhibits Defendants' enforcement and legislative power over its ordinances, particularly by limiting its ability to enforce anti-camping ordinances or any law Plaintiffs or Plaintiffs' Counsel determines to be an "analogous" provision, which is undefined in the Agreement. The Agreement imposes a multi-week, burdensome notice and outreach process on Defendants before they can enforce their ordinances on public property, during which time if Plaintiffs or Plaintiffs' Counsel in any way

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

dispute Defendants' compliance with the Agreement, Defendants cannot enforce their own ordinances. The Agreement requires Defendants to designate multiple zones of public property where it will not enforce its ordinances. Because the Agreement affords its relief to "Homeless Persons" it also unlawfully divests Defendants of police power by excepting "Homeless Persons" from neutral laws applicable to all other persons. Under California law, any contract abnegating localities' police power is unlawful. The Agreement, and thus the final order incorporating it and retaining jurisdiction upon it, are void for jurisdictional error.

Pursuant to Federal Rule of Civil Procedure 60, the Agreement and final order must also be set aside because continued enforcement of the prospective Agreement and final order is inequitable. Defendants are forced into the position of complying with an agreement that is illegal under California law or violating a court order incorporating it by non-compliance with the Agreement.

Alternatively, even if the entire Agreement and final order are not unlawful, the unlawful provisions affording class-relief to all "Homeless Persons" and the provisions illegally surrendering Defendants' police power, must be severed. California, applicable to the Agreement, law permits several of unlawful terms.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, all of the pleadings, files, and records in this proceeding, all other matters of which the Court may take judicial notice, and any argument or evidence that may be presented to or considered by the Court prior to its ruling.

Dated: August 14, 2025

COLE HUBER LLP

By: ***/s/ Ronald J. Scholar***
Scott E. Huber
Ronald J. Scholar
Tyler J. Sherman
Attorneys for Defendants, City of Chico and City of Chico Police Department

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

TABLE OF CONTENTS

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

TABLE OF AUTHORITIES

Cases **Page:**

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

Federal Statutes

Rules / Code / Procedure

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

I. INTRODUCTION

In 2021, eight homeless City of Chico residents sued the City and the City of Chico Police Department (collectively, "City"). They primarily alleged that enforcement of City anti-camping laws against homeless persons was cruel and unusual punishment in violation of the Eighth Amendment to United States Constitution. The parties settled, executed a settlement agreement ("Agreement"), and stipulated to dismissal. The Court incorporated the Agreement into a final order dismissing the case with prejudice. (ECF No. 153.) The Agreement and consequently the final order are unlawful for at least three reasons and therefore both must be set aside.[1]

First, the Agreement states that it applies to all "Homeless Persons" as that term is defined under federal law. Applying the restrictions of the Agreement to all "Homeless Persons," instead of the eight individual plaintiffs unlawfully effects class-based relief in the absence of class-certification in contravention of the requirements of Federal Rule of Civil Procedure 23.

Second, the Agreement illegally divests the City of its police powers by mandating, among other illegalities, that the City cannot enforce any ordinance Plaintiffs deem "analogous" to an anti-camping ordinance. For the City to clear public property of unlawful encampments, regardless of the reason or imminence of hazards that require clearance, the Agreement requires the City to follow a multi-week notice process during which time, if Plaintiffs' *Counsel* dispute compliance with the Agreement in any form, the City cannot enforce any anti-camping or "analogous" law. California law prohibits local governments from surrendering their enforcement power by contract, rendering any contract that does so void.

Third, continued prospective enforcement of the final order and Agreement is inequitable. Not only is the City forced to comply with an unlawful agreement in the first instance, but it is in the untenable position of complying with that illegal agreement or violating the Court's final order, by noncompliance.

[1] Consistent with the dispute resolution procedures pursuant to paragraph 16 of the Agreement, the City, utilizing the assistance of United States Chief Magistrate Judge Carolyn Delaney, initiated the process, submitted non-confidential briefing raising the issues in this motion and other issues relating to the interpretation of the Agreement and participated in a settlement conference with Plaintiffs' Counsel. Regrettably, no resolution was reached as to any issue either during the conference or thereafter.

The City thus moves under Federal Rule of Civil Procedure 60 to void the unlawful Agreement and set aside the final order incorporating it or, in the alternative, sever the illegal portions of the Agreement.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 60(b) "allows a party to seek relief from a final judgment[.]" (*Gonzalez v. Crosby*, 45 U.S. 524, 528 (2005); *Jones v. Ryan*, 733 F.3d 825, 833 (9th Cir. 2013).) On motion, Rule 60 empowers the Court to relieve a party of final judgment because of, among other reasons, mistake, inadvertence, surprise, or excusable neglect; the judgment is void; applying the judgment prospectively is no longer equitable; or "any other reason that justifies relief." (Fed. R. Civ. P. 60(b).) Parties may employ Rule 60 to challenge judgments premised on or incorporating settlement agreements. (*E.g.*, *Keeling v. Sheet Metal Workers Int'l Ass'n, Local Union 162*, 937 F.2d 408, 410 (9th Cir. 1991); *VanLeeuwen v. Farm Credit Admin.*, 600 F.Supp. 1161, 1164 (Dr. Or. 1984); *see In re Hunter*, 66 F.3d 1002, 1005 (9th Cir. 1995).)

Unless limited by Rule 60's one-year limitation applicable to Rule 60(b)(1)–(3)–mistake, new evidence, and fraud—the motion need only be brought within a reasonable time. (Fed. R. Civ. P. 60(c)(1).) A motion on grounds that a judgment is void may be brought at any time. (*Meadows v. Dominican Republic*, 17 F.2d 517, 521 (1987).) Rule 60(b) motions are within the Court's sound discretion. (*Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1100 (9th Cir. 2006).)

III. ARGUMENT

A. THE SETTLEMENT AGREEMENT AND FINAL ORDER MUST BE VACATED FOR JURISDICTIONAL ERROR BECAUSE THEY UNLAWFULLY AFFORD CLASS-WIDE RELIEF WITHOUT A CLASS HAVING EVER BEEN CERTIFIED

1. Relief is Limited to Named Parties In The Absence of A Class Action, and to Settle A Class Action the Court Must Find a Qualified Class

With few exceptions, relief in a lawsuit is near-universally limited to named parties. (*E.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348–49 (2011); *Warth v. Seldin*, 422 U.S. 490, 498–99 (1975); *Walter v. Leprino Foods Co.*, 670 F.Supp.3d 1035, 1045–47 (E.D. Cal. 2023).) Limitations on standing to sue usually require plaintiffs to assert their own injuries not those of third parties. (*Powers v. Ohio*, 499 U.S. 400, 410 (1991).) The traditional exception is a representative

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

class action. (*Dukes*, 564 U.S. at 348–49; *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501 (9th Cir. 1996); *Walter*, 670 F.Supp.3d at 1045–47.)

A class action allows a small group of people to litigate on behalf numerous similarly situated people. (*E.g.*, *Walter*, 670 F.Supp.3d at 1045–47.) Under Federal Rule of Civil Procedure 23, though, the Court must "certify" the class before representative class members may litigate on behalf of others. (Fed. R. Civ. P. 23(a), (e); *Walter*, 670 F.Supp.3d at 1045–47; *United States ex rel. Terry v. Wasatch Advantage Grp., LLC*, 327 F.R.D. 395, 403 (E.D. Cal. 2018).) Rule 23(a) lists four threshold requirements applicable to every class action and which plaintiffs seeking class certification must satisfy: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. (Fed. R. Civ. Proc. 23(a)(1)–(4).) Alongside satisfying certification prerequisites, plaintiffs seeking certification must show that they can maintain the action under Rule 23(B)(1), (2), or (3). (*Amchem Products v. Windsor*, 521 U.S. 591, 614 (1997).)

In part because it is an exception to the rule limiting relief to the named parties, class certification is required *before* relief can be granted on a class-wide basis. (*See, e.g.*, Fed. R. Civ. Proc. 23(a); *Dukes*, 564 U.S. at 348–49; *Walter*, 670 F.Supp.3d at 1045–47.) The United States Supreme Court in *Amchem Products v. Windsor*, faced with "settlement only" class certification in mass asbestos litigation, excluded some requirements and mandated scrutiny of others:

> Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial. But other specifications of the Rule—those designed to protect absentees by blocking unwarranted or overbroad class definitions—demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold. See Rule 23(c), (d).

(*Amchem*, 521 U.S. at 620.) Rule 23[2] requires the court approval of class action settlements, and the

[2] Following *Amchem*, Rule 23(e) was amended to say, "[t]he claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised *only with the court's approval*." (Fed. R. Civ. Proc. 23(e) (emphasis added).)

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

Supreme Court stated that the Rule functions as an *additional* criterion, not one that supersedes other class requirements. (*Id.* at 620–21.) While courts can dispense with some analysis in the absence of trial—specifically whether a case would present serious case management problems—it may not dispense with determination of whether the "class" to which a settlement refers is qualified for certification. (*Id.*) The Ninth Circuit applies that rule. (*E.g.*, *In re Hyundai and Kia Fuel Economy Litigation*, 926 F.3d 539, 556–57 (2019); *Staton v. Boeing Co.*, 327 F.3d 938, 952–53 (9th Cir. 2003).)

In settling a purported class action, the Court must review the agreement and confirm the propriety of the proposed class and fairness of the settlement and decide whether class certification requirements are satisfied. (*Amchem*, 521 U.S. at 620–21; *Hyundai*, 926 F.3d at 556–57; *Staton*, 327 F.3d at 952–53; *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 485–86 (E.D. Cal. 2010); *In re Wireless Facilities, Inc. Securities Litigation*, 253 F.R.D. 630, 633–34 (S.D. Cal. 2008).) The Court must determine if class members are to receive notice of the proposed settlement and, if necessary, an opportunity to opt out of the class. (Fed. R. Civ. P. 23(e); *see, e.g.*, *Amchem*, 521 U.S. at 620–21; *Cottle v. Plaid Inc.*, 340 F.R.D. 356, 377–82 (N.D. Cal. 2021); *Wireless Facilities*, 253 F.R.D. at 633–34.)

2. The Settlement Agreement is Unlawful Because It Purports to Apply to "Homeless Persons" as a Class But No Class Was Ever Certified

The Agreement is an unlawful class-wide settlement. First, it explicitly includes a class beyond Plaintiffs themselves because it includes unnamed absent persons. (*Walter*, 670 F.Supp.3d at 1045–47.) No fewer than 85 times, the Agreement seeks to apply its terms to "Homeless Persons," which the Agreement defines as any person within the meaning of 42 U.S.C. § 11302. (Agreement ¶ 3(c).) That statute is enormous in its reach. It defines "Homeless Person" to include, among dozens of other circumstances, any person lacking a fixed home, *at risk* of losing a home, or living in temporary shelter. (42 U.S.C. § 11302.) There is no other limit in the Agreement. The term "Homeless Persons" encompasses any and every person within the meaning of § 11302 who may come to the City. (Agreement ¶ 3(c).)

/ / /

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

Second, in so broadly applying the Agreement to any Homeless Person at all and for whom, by default, Plaintiffs were stand-ins, the Agreement turns the case into a representative lawsuit and by necessity affords class-based relief. (*Cf. Walter*, 670 F.Supp.3d at 1045–47.) Indeed, it gives Plaintiffs' Counsel the right to enforce the Agreement as to *any* "Homeless Person" regardless of whether they are a client or named party. (*E.g.*, Agreement ¶ 10(c).) But Plaintiffs did not bring a class action, so relief is by law limited to the eight of them. (*Walter*, 670 F.Supp.3d at 1045–47.)

Even were this case a class action, no court ever reviewed the Agreement for compliance with Rule 23 which, per the Supreme Court, is *mandatory*. (*See Amchem*, 521 U.S. at 620–21; *Hyundai*, 926 F.3d at 556–57.) The Agreement was not reviewed for substantive fairness or consideration of whether Plaintiffs were adequate representatives of the class, whether common factual or legal questions prevail, or whether the claims and defenses are typical across proposed members. Those considerations are required before class relief can be afforded. (*See Amchem*, 521 U.S. at 620–21; *Hyundai*, 926 F.3d at 556–57.) No class was ever certified. Absent the requisite review and certification, the class relief is unlawful. (*See* Fed. R. Civ. P. 23(e); *Amchem*, 521 U.S. at 620–21; *Hyundai*, 926 F.3d at 556–57.)

3. The Unlawful Class Certification is Jurisdictional Error Rendering the Final Order Void.

The Agreement and final order incorporating it are subject to voidness challenge at any time. (*Meadows*, 17 F.2d at 521.) A order is void for Rule 60 purposes when there is jurisdictional error or a due process violation depriving a party of notice and an opportunity to be heard. (*United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010).) The *de facto* class in the Agreement and dismissal order is jurisdictional error because no class triggering exceptions to personal jurisdiction and standing requirements were ever certified.

Courts must have personal jurisdiction over a party to adjudicate their claims. (*See Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 582 U.S. 255, 261–62 (2017); *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430–31 (2007); *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999); *Matter of Star & Crescent Boat Co., Inc.*, 549 F.Supp.3d 1145, 1153 (S.D. Cal. 2021).) Litigants can, of course, consent to jurisdiction by bringing their

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

claims but absent that consent (or, for defendants, sufficient contacts with a forum satisfying due process) a court lacks authority to hear a case. (*Cf. Sinochem*, 549 U.S. at 431; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471–75 & n.14 (1985); *Tuli*, 172 F.3d at 712; *Star & Crescent*, 549 F.Supp.3d at 1153.)

A class action is a limited exception to rules of personal jurisdiction and limitations of relief to named parties. (Fed. R. Civ. P. 23; *Dukes*, 564 U.S. at 348–349; *Owino v. CoreCivic, Inc.*, 700 F.Supp.3d 939, 944–47 (S.D. Cal. 2023); *Walter*, 670 F.Supp.3d at 1045–47.) Because a class action is a representative suit, due process concerns are reduced, and each individual class member need not affirmatively consent to jurisdiction. (*Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 808–13 (1985).) *But that is true only if the requirements of class certification are satisfied, triggering the exception to limits on jurisdiction and relief.* (*See General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 155 (1982).; *Phillips*, 472 U.S. at 808–13; *Owino*, 700 F.Supp.3d at 944–46; *Sotomayor v. Bank of America, N.A.*, 377 F.Supp.3d 1034, 1036–39 (C.D. Cal. 2019) (discussing jurisdiction in the class action context).) The Court must conduct an inquiry into, among other things, "the common nature of the named plaintiffs' and the absent plaintiffs' claims, the adequacy of representation, the jurisdiction possessed over the class, and any other matters that will bear upon proper representation of the absent plaintiffs' interest." (*Phillips*, 472 U.S. at 808–13; *see Amchem*, 521 U.S. at 620; *Owino*, 700 F.Supp.3d at 944–47; *Walter*, 670 F.Supp.3d at 1045–47.)

The "Homeless Persons" class was never certified. There was no inquiry into whether homeless persons beyond Plaintiffs possessed claims typical of the purported class, whether there were any common questions of fact or law, or whether Plaintiffs were adequate representatives of the class. (*See* Fed. R. Civ. P. 23(a).) One of Rule 23's requirements is also that the Court must consider not only whether named plaintiffs adequately represent the class, but also whether class counsel can adequately represent the class (here, an unlimited class of homeless persons); no such review occurred yet the Agreement and order grants counsel the ability to enforce the Agreement on behalf of anyone falling under the definition of "Homeless Person" whether a named party or not. (Fed. R. Civ. P. 23(g); *e.g.*, Agreement ¶ 10(c).)

/ / /

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

Consequently, no exception to personal jurisdiction was ever triggered. (*See Dukes*, 564 U.S. at 348–349; *Phillips*, 472 U.S. at 808–13; *Owino*, 700 F.Supp.3d at 944–47.) Thus, each "Homeless Person" was individually required to sue the City since no representative suit occurred. (*See Dukes*, 564 U.S. at 348–349; *Sinochem*, 549 U.S. at 431; *Phillips*, 472 U.S. at 808–13; *Owino*, 700 F.Supp.3d at 943–46; *Walter*, 670 F.Supp.3d at 1045–47.) No homeless individual other than Plaintiffs consented to jurisdiction or sued the City. The Court thus neither acquired jurisdiction over those persons nor could it afford them class relief. (*See* Fed. R. Civ. P. 23; *Phillips*, 472 U.S. at 808–12; *Tuli*, 172 F.3d at 712; *Owino*, 700 F.Supp.3d at 944–47; *Walter*, 670 F.Supp.3d at 1045–47.) Absent that exception, the Agreement and incorporating dismissal order cannot effectuate relief on their behalf or bind the City to a judgment in their favor. (*Dukes*, 564 U.S. at 348–349; *Sinochem*, 549 U.S. at 431; *Amchem*, 521 U.S. at 620; *Burger King Corp.*, 471 U.S. at 471–75 & n.14; *Tuli*, 172 F.3d at 712; *Owino*, 700 F.Supp.3d at 944–46.)

Nor, by the same token, was there any inquiry into whether any Homeless Person beyond Plaintiffs had standing to sue the City. Article III of the United States Constitution limits judicial power to "actual cases and controversies" which in turn require standing to sue. (*Spokeo, Inc. v. Robins*, 578 U.S. 330, 337–38 (2017).) Standing requires a plaintiff establish (1) a concrete injury in fact, (2) that the injury is traceable to the defendant's conduct, and (3) that the injury may be redressed by a favorable decision. (*Ernest Bock, LLC v. Steelman*, 76 F.4th 827, 834–35 (2023).) Standing is an absolute jurisdictional threshold and can be raised at any time. (*Id.*) Absent any injury for which the City is responsible, the class of "Homeless Persons" other than Plaintiffs lacked standing and there was no Article III jurisdiction permitting redress in their favor. (*See Spokeo*, 578 U.S. at 337–38.)

Those jurisdictional defects render the dismissal order void. (*See, e.g.*, *Espinosa*, 559 U.S. at 271; *Steelman*, 76 F.4th at 834–35); *Fed. Trade Comm'n v. Hewitt*, 68 F.4th 461, 465–67 (9th Cir. 2023).) The City is appropriately relieved from the order and Agreement under Rule 60(b)(4).)

/ / /

/ / /

/ / /

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

4. Even if The Entire Agreement is Not Illegal, The "Homeless Persons" Class Provision Must Be Severed Or Interpreted to Apply Only to the Eight Individual Plaintiffs

If the Court finds that only the "Homeless Persons" term is illegal but that the rest of the Agreement is not, the Agreement should be modified to sever that term or interpret the clause to apply only to the eight individual Plaintiffs. (Agreement ¶ 16(a)–(h).) The Agreement explicitly permits motions to modify the Agreement if the parties cannot agree on interpretation or modification. (*Id.*)

Since there is no general federal contract law, courts apply state contract law to settlement agreements. (*See Erie R. Co. v. Tompkins*, 304 U.S. 64, 78, (1938); *Golden v. California Emergency Physicians Med. Grp.*, 782 F.3d 1083, 1087 (9th Cir. 2015); *IFC Credit Corp. v. United Bus. & Indus. Fed. Credit Union*, 512 F.3d 989, 991–92 (7th Cir. 2008).) California law applies to the Agreement here. (*Golden*, 782 F.3d at 1087; *Wilcox v. Arpaio*, 753 F.3d 872, 876 (9th Cir. 2014).) California's courts ordinarily do not enforce illegal contracts; nor will federal courts. (*See Ronderos v. USF Reddaway, Inc.*,114 F.4th 1080, 1099–1100 (9th Cir. 2024); *Am. Postal Workers Union AFL-CIO v. U.S. Postal Serv.*, 682 F.2d 1280, 1286 (9th Cir. 1982); *Yuba Cypress Housing Ps., Ltd. v. Area Devs.*, 98 Cal.App.4th 1077, 1082 (2002).) California law does, though, permit severance of illegal terms from an otherwise lawful contract. (*E.g.*, Cal. Civ. Code § 1599; *Little v. Auto Stiegler, Inc.*, 29 Cal.4th 1064, 1074 (2003).)

If Court is inclined to find the remaining terms of the Agreement lawful insofar as they apply to the *named Plaintiffs*, the Court can and should sever the "Homeless Person" definition unlawfully extending relief beyond the named parties or interpret "Homeless Persons" as if applied only to the eight named Plaintiffs. (*See, e.g.*, *Ronderos*, 114 F.4th at 1099–1100; *Whitworth v. SolarCity Corp.*, 336 F.Supp.3d 1119, 1129 (N.D. Cal. 2018).)

/ / /

/ / /

/ / /

/ / /

/ / /

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

B. THE FINAL ORDER IS VOID BECAUSE THE SETTLEMENT AGREEMENT UNLAWFULLY SURRENDERS THE CITY OF CHICO'S POLICE POWER AND IS JURISDICTIONAL ERROR

1. Contracts May Not Surrender the City's Police Power

Under California law contracts are unenforceable it they surrender municipalities' police powers or subjects them to overrule by private parties. (*E.g.*, *Avco Cmty. Devs, Inc. v. South Coast Regional Comm'n*, 17 Cal. 3d 785, 800–801 (1976); *County Mobilehome Positive Action Committee, Inc. v. County of San Diego*, 62 Cal.App.4th 727, 736 (1998); *Summit Media LLC v. City of Los Angeles*, 211 Cal.App.4th 921, 934 (2012).)

Localities' "police power" is "the power of sovereignty or power to govern," or to subject persons to reasonable regulation for the general welfare and to safeguard public health, safety, morals, and peace. (*Cotta v. City and County of San Francisco*, 157 Cal.App.4th 1550, 1557 (2007); *Alves v. Justice Court of Chico Judicial Dist., Butte County*, 148 Cal.App.2d 419, 422 (1957).) "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const. art. XI, § 7.)

Municipalities cannot contract themselves out of the right to exercise police power. (*E.g.*, *Avco Cmty. Devs, Inc.*, 17 Cal. 3d at 800–01; *Summit Media*, 211 Cal.App.4th at 934.) Localities cannot divest themselves of "legislative and government functions" like the ability to legislate or exercise police power in the future. (*E.g.*, *Avco*, 17 Cal. 3d at 800–801; *Discovery Builders, Inc. v. City of Oakland*, 92 Cal.App.5th 799, 810–11 (2023).) Any contract that does so is unenforceable as contrary to public policy. (*County Mobilehome*, 62 Cal.App.4th at 736; *Delucchi v. County of Santa Cruz*, 179 Cal.App.3d 814, 823 (1986).)

The Supreme Court of California and Courts of Appeal alike have repeatedly invalidated agreements purporting to limit localities' ability to adopt ordinances, amend their general plans, alter zoning, or otherwise regulate within their jurisdictions. In *Avco Community Developers, Inc. v. South Coast Regional Commission*, the Supreme Court rejected a developer's argument that it had an agreement with a county, approved by the State, relating to the sale of beach property by the developer in exchange for a commitment by the county that zoning laws enacted after development of a parcel had begun would not apply. (*See Avco*, 17 Cal.3d at 799–800.) The Court said that the

county could not contract away its right to exercise police power in the future, even if expressly agreed to. (*Id.*)

Similarly, in *Trancas Property Owners Association. v. City of Malibu*, the Court of Appeal held a settlement agreement "intrinsically invalid because it includes commitments to take or refrain from regulatory actions regarding the zoning of Trancas's development project, which may not lawfully be undertaken by contract." *Trancas Property Owners Association. v. City of Malibu*, 138 Cal.App.4th 172, 180–82 (2006).) The court identified two invalid provisions: the city's guarantee that a proposed development would not be blocked by future zoning, and that the developer would not need to comply with existing or future density restrictions. (*Id.*) The court wrote that land use regulation is a police power, and held that the city could not lawfully contract away its ability to use it in the future. (*Id.*)

Other cases have followed suit. In *Discovery Builders, Inc. v. City of Oakland*, a developer challenged its obligation to pay impact fees enacted years after it had agreed with the City of Oakland that fees paid under an agreement satisfied "all of the Developer's obligations for fees due to the City." (*Discovery*, 92 Cal.App.5th at 803, 811–14.) The Court of Appeal concluded that the term was an invalid as an abrogation of police power and rejected the developer's argument that police power is only concerned with enacting laws, not enforcing them since the power to enact laws would be meaningless without the power to enforce. (*Id.* at 813.)

And in *County Mobilehome Positive Action Committee, Inc. v. County of San Diego*, the Court of Appeal held unlawful a county's 15-year moratorium on any enactment of rent control legislation with respect to mobile home park owners who entered an accord with the county since the county had effectively surrendered and bargained away a municipal function. (*County Mobilehome*, 62 Cal.App.4th at 735–38.)

2. The Settlement Agreement Surrenders the City's Police Power and is Unlawful

The Agreement, via the dismissal order incorporating it, is the mechanism by which the Court maintained jurisdiction over this case. (Agreement ¶ 2; ECF No. 153 ¶¶ 2–3.) But that order is void because the Agreement is itself void as a surrender of police power and consequently

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

provided no basis for retention of jurisdiction. (*See Espinosa*, 559 U.S. at 271; *Discovery*, 92 Cal.App.5th at 810–11.) Put differently, with respect to the Agreement, there was a total want of jurisdiction rendering the order upon it void. (*See Hewitt*, 339 F.R.D. at 465–66.)

The Agreement surrenders the City's police power by divesting it of the ability to enforce its own laws, namely its anti-camping ordinances. (*See* Agreement ¶ 10.) A few examples, among other provisions, illustrate that surrender. Provision 10 of the Agreement is the most egregious. First, the City must provide notice to Plaintiffs' private counsel seven days before it can enforce its ordinances against *any* Homeless Person. (*Id.* ¶ 10, 10(c).) If Plaintiffs' Counsel in any way disputes compliance with the Agreement (such as provision of shelter for homeless residents) Counsel can initiate dispute resolution processes during which the City is completely forbidden from enforcing its anti-camping or *any* law Plaintiff's Counsel deems "analogous," even though that term is undefined. (*Id.*) Second, even after that notice, assuming Counsel does not dispute it, the City must provide an additional total of 10 days of notice to any Homeless Person before it can enforce its laws. (*Id.* ¶ 10(f).) Third, even when the City is finally permitted to enforce, it can only designate three of its *own* public properties at a time and only if the number of affected "Homeless Persons" does not exceed fifty. (*Id.* ¶ 10(e).) And when enforcing, the City must designate three additional City properties where it *cannot* enforce its laws. (*Id.* ¶ 10(m).) Fourth, while undertaking that burdensome and time-consuming procedure, the City is obligated to act as referral service by providing every Homeless Person with notice of Plaintiff's Counsel's contact information, irrespective of whether Plaintiff's Counsel represents them. (*Id.* ¶ 3(a), 10(m).)

Enforcement of the City's anti-camping ordinances, however, is a quintessential exercise of the City's police power. (*E.g.*, Cal. Const. art. XI, § 7; *Cotta*, 157 Cal.App.4th at 1557; *Alves*, 148 Cal.App.2d at 422.) And the police power rule voids any "contract which amounts to a city's *surrender*, or *abnegation*, of its control of a properly municipal function." (*County Mobilehome*, 62 Cal.App.4th at 736 (emphases added); *Morrison Homes Corp. v. City of Pleasanton*, 58 Cal.App.3d 724, 734 (1976).) The key consideration is whether the "crucial control element has been lost." (*County Mobilehome*, 62 Cal.App.4th at 735–38.) It is that element that has been lost here. The City, regardless of the circumstances, cannot enforce *any* anti-camping ordinance absent agreement by

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

Plaintiffs (or, more accurately, Plaintiffs' Counsel) that the City has complied with the Agreement. (Agreement ¶ 10, 10(c).) Nor, with the same restrictions, can it enforce *any* law that they deem "analogous," which the Agreement does not define. (*See id.*) Any disagreement means Plaintiffs can freeze enforcement altogether. (*Id.* ¶ 10, 10(c).)

Cases upholding contractual "limits" on police power are few and far between. Those cases that have upheld such agreements have done so because the locality retained control. In *Santa Margarita Area Residents Together v. San Luis Obispo County*, 84 Cal.App.4th 221, 225–26 (2000), a developer and county entered into limited-term development agreement (permitted by the Government Code) which "froze" in place the current zoning applicable to a development during the period of development in return for dedication of land for public use and compliance with area plans and environmental law. The county expressly retained power to approve or disapprove development under the current zoning laws. (*Id.* at 233.) The Court determined that the agreement did not surrender the county's police power since it retained discretionary authority and was time-limited. (*Id.* at 232–33.)

Other cases have upheld merely interpretive "limits" on police power. For example, in *108 Holdings, Ltd. v. City of Rohnert Park*, 136 Cal.App.4th 186, 190–91, 193–97 (2006), a city settled a CEQA lawsuit and executed a settlement agreeing to interpret its general plan consistent with various environmental policies. The Court of Appeal rejected a developer's challenge, stating that nothing in the agreements limited the city's ability to amend its general plan or legislate in the future. (*Id.* at 193–97.)

The Agreement here dramatically differs in scale and kind from the interpretive and zoning-freeze cases that have upheld contractual limits on police power. Its provisions fall squarely within the decisions voiding contracts for bargaining away police power, like the commitments to refrain from regulatory or enforcement action at issue in *Trancas*, or the legislative moratorium in *County Mobilehome*. The Agreement is thus "intrinsically invalid" because it not only commits the City to forgoing particular manners of enforcement but it strips the City of dominion over its own laws and property by requiring it to refrain from regulatory and enforcement activity on massive swathes of public property. (*See* Agreement ¶ 10(f), (m); *Trancas*, 138 Cal.App.4th at 180–82.)

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

Additionally, the Agreement unlawfully abnegates the City's police power because it effectively exempts any Homeless Person entering the City from enforcement of neutral laws that apply to every other person. (*Summit Media*, 211 Cal.App.4th at 934–37.) Per the Court of Appeal, "[a]n agreement is ultra vires when it contractually exempts settling parties from ordinances and regulations that apply to everyone else and would, except for the agreement, apply to the settling parties." (*Summit Media*, 211 Cal.App.4th at 937.)

The City had no authority, as a matter of law and public policy, to execute the Agreement. Both it and the final order incorporating it are thus unlawful.

3. The Settlement Agreement Is Void, so the Retention of Jurisdiction Based on the Agreement is Void

Under California law, the Agreement's surrender of the City's power rendered it *ultra vires* and void from the outset. (*Discovery*, 92 Cal.App.5th at 810–11; *County Mobilehome*, 62 Cal.App.4th at 736.) Its provisions empowering the Court to retain jurisdiction over the Agreement were of no effect. (*Discovery*, 92 Cal.App.5th at 810–11; *Summit Media*, 211 Cal.App.4th at 934–37; *County Mobilehome*, 62 Cal.App.4th at 736.) There was accordingly no Agreement—and no jurisdiction whatsoever—on which the Court could incorporate the Agreement into a final order retaining oversight jurisdiction or dismissing the case. The final order is void for jurisdictional error on that basis. (*See, e.g.*, *Espinosa*, 559 U.S. at 271; *Hewitt*, 68 F.4th at 466–67.)

C. EVEN IF THE FINAL ORDER IS NOT VOID, ENFORCEMENT OF THE AGREEMENT IS INEQUITABLE BECAUSE COMPLIANCE IS UNLAWFUL

As the Court noted in its order on the City's prior motion, the Agreement and order are prospective because they restrain future enforcement of anti-camping law and require ongoing oversight and retention of jurisdiction. (ECF No. 226 at 8; *see Hewitt*, 68 F.4th at 466–67.) Under Rule 60(b)(5), if enforcement of a prospective order or judgment becomes inequitable, the Court may vacate or modify it. (Fed. R. Civ. P. 60(b)(5); *Horne v. Flores*, 557 U.S. 433, 447–48 (2009); *S.E.C. v. Coldicutt*, 258 F.3d 939, 942 (9th Cir. 2001).) Enforcement of an order becomes inequitable when changes in law or circumstances, among other things, render that enforcement "detrimental to the public interest" or when compliance becomes unworkable or substantially

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

onerous. (*Horne*, 557 U.S. at 447–48; *Coldicutt*, 258 F.3d at 942); *Coleman v. Brown*, 922 F.Supp.2d 1004, 1026–27 (E.D. Cal. 2013).) Enforcement may also be inequitable when compliance is unlawful. (*Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 388(1992); *Coldicutt*, 258 F.3d at 942.) The equity standard is flexible and allows courts to account for all circumstances; it is not limited to circumstances that are "unforeseen or unforeseeable." (*Rufo*, 502 U.S. at 385, 387–93; *Bellevue Manor Assocs. v. United States*, 165 F.3d 1249, 1255–57 (9th Cir. 1999).)

The U.S. Supreme Court has recognized on multiple occasions, in cases like *Rufo v. Inmates of Suffolk County Jail*, that vacatur or modification of an order is justified when what the order requires is illegal. (*Rufo*, 502 U.S. at 385, 387–93.) The Court recognized that relief is proper where incorrect applications or interpretations of law have become apparent. (*Id.*) That is the case here. The absence of class certification or class-review of any kind renders the Agreement and final order void and unenforceable. And, under California law, it is both unlawful for the City to comply with the Agreement's usurpation of the City's police power, and the Agreement is a nullity even if compliance were not illegal. (*E.g.*, *County Mobilehome*, 62 Cal.App.4th at 736–38.) Even if the parties assumed the Agreement was lawful at the time of execution and dismissal, that "misunderstanding of the law [can] form a basis for modification" of or relief from judgment. (*Rufo*, 502 U.S. at 385, 387–93.)

Relief is necessary here. Because compliance with the Agreement and order are impermissible, prospective enforcement of the either is inequitable under Rule 60(b)(5). The City is left in the position of enforcing its laws under restrictions California law prohibits. (*Id.*; *Summit Media*, 211 Cal.App.4th at 934–37.) Indeed, because the City is, of course, also obligated to comply with the Court's final order, it is in the inequitable and unworkable position of complying with an unlawful agreement or violating the Court's directives, further justifying relief. (*See, e.g.*, *Rufo*, 502 U.S. at 385, 387–93; *Bellevue*, 165 F.3d at 1253–57.)

The Agreement and final order must be set aside because the City cannot lawfully comply with them. Alternatively, the Agreement must be modified to sever the unlawful restrictions on the City's police power.

/ / /

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

IV. CONCLUSION

For the reasons above, the City respectfully requests that the Court relieve it of the final order and Agreement or, in the alternative, modify the Agreement to (1) apply only to the named parties, and (2) sever the unlawful abnegations of the City's police power in provision 10 of the Agreement.

Dated: August 14, 2025

COLE HUBER LLP

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

Scott E. Huber
Ronald J. Scholar
Tyler J. Sherman
Attorneys for Defendants, City of Chico and City of Chico Police Department

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661

PROOF OF SERVICE

Bobby Warren, et al. v. City of Chico, et al.
U.S.D.C / Eastern District of California

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

On August 14, 2025, I served true copies of the following document(s) described as

NOTICE OF MOTION AND MOTION OF DEFENDANTS CITY OF CHICO AND CITY OF CHICO POLICE DEPARTMENT FOR RELIEF FROM FINAL JUDGMENT OR ORDER PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60; OR, IN THE ALTERNATIVE, TO MODIFY SETTLEMENT AGREEMENT

on the interested parties in this action as follows:

Cory Albert Turner
cturner@lsnc.net
abattaglia@lsnc.net
cory.turner.36@gmail.com

John Thomas H. Do
jdo@aclunc.org
aalas@aclunc.org
dbodell@aclunc.org

Katherine Wieking Wardrip
kwardrip@lsnc.net

Matthew Kyle Bowen
mbowen@lsnc.net

Richard A. Rothschild
rrothschild@wclp.org

Robert Dexter Newman
rnewman@wclp.org

Robert Louis Berry
ROB@RLBERRYLAW.COM
rlberrylaw@gmail.com

Ronald Jason Scholar
rscholar@colehuber.com
dcole@colehuber.com
kmorris@colehuber.com
ssgriswold@colehuber.com

Sarah J. Steinheimer
ssteinheimer@lsnc.net

Scott Evan Huber
shuber@colehuber.com

Stephen E. Goldberg
sgoldberg@lsnc.net

Stephen T. Owens
sowens@agclawfirm.com

Tania Ochoa
tochoa@agclawfirm.com

Tyler Sherman
tsherman@colehuber.com

Walter P. McNeill
waltmcn@aol.com

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

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

Executed on August 14, 2025, at Roseville, California.

/s/ Kirsten Morris
Kirsten Morris

COLE HUBER LLP
2281 LAVA RIDGE COURT, SUITE 300
ROSEVILLE, CALIFORNIA 95661