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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

PACIFIC MEDIA WORKERS GUILD; ANGEL
JOSE FLORES; JULISSA RUIZ RAMIREZ;
ALYSSA LEIVA;

Plaintiffs,

vs.

CITY OF MODESTO, BRANDON
GILLESPIE, in his official capacity as Modesto
Chief of Police,

Defendants.

CASE NO. 2:26-CV-01623-JAM-CKD

**REPLY TO DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Judge: Hon. John A. Mendez
Courtroom: 6, 14th Floor
Date: June 30, 2026
Time: 1:00 p.m.

INTRODUCTION

In their moving papers, Plaintiffs demonstrated that Modesto’s Ordinance criminalizing face coverings and safety gear at public assemblies triggers—and fails—heightened scrutiny. The Ordinance applies exclusively to people participating in a “demonstration, rally, counter-protest, picket line, march, or public assembly.” ECF No. 14-2 at RJN 128; ECF No. 21-7 at DEFS 223. It categorically bans them from carrying items that, at times, can be fundamental to engaging in quintessential free speech activities—thereby burdening core First Amendment rights. Plaintiffs do not assert an absolute right to carry or wear these items. Rather they maintain that if the City is going to restrict the manner in which people assemble and protest, the restriction must be narrowly tailored to a significant government interest. The Ordinance is anything but. The City responds to Plaintiffs’ arguments with detour and deflection. It contorts established legal tests, disregards controlling authority, collapses distinct state and federal claims, and largely ignores Plaintiffs’ press concerns. Compounding these errors, the City advances revisionist history alongside meritless evidentiary and statute of limitations arguments. Stepping back from the City’s bluster reveals a singular truth: The Ordinance is fatally flawed from a free speech perspective and unworkable from a due process one.

ARGUMENT

I. Plaintiffs Established Likelihood of Success on Free Speech and Section 409.7 Claims

A. Ordinance is content-based restriction that fails strict scrutiny.

The City’s Opposition confirms that Modesto adopted the Ordinance to target people whom it deemed Proud Boys or Antifa because it perceives that such people have a propensity for violence and wear confrontational attire that might be off-putting. ECF No. 21-1 (“Gillespie”) ¶¶ 6, 8-9; ECF No. 21 (“Opp.”) at 11. The law permits neither of these grounds and the City’s discriminatory purpose gives rise to strict scrutiny. ECF No. 12-1 (“MPI”) at 22-23. The City presses the specious argument that the Ordinance cannot be viewpoint based because these groups have “diametrically opposed ideologies.” Opp. at 23. That is not the test. In *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), the Supreme Court made clear that a facially content-neutral law when borne of discriminatory purpose can result in the unconstitutional targeting of specific speech or speakers. *Id.* at 168-69; *Parr v. Mun. Ct.*, 3 Cal. 3d 861, 865 (1971).

1 Rather than address this fraught history, the City tries to cut and run. It raises a statute of
 2 limitations argument that is wrong on the facts and the law. Opp. at 15 n.2. Plaintiffs are challenging
 3 the current version of “Title 4, Chapter 23 of the Modesto Municipal Code, entitled Restrictions on
 4 Use of Specified Items During Public Assembly,” which they define as “the Ordinance.” ECF No. 1-
 5 2; ECF No. 12 at 2. Their lawsuit followed within months of the Ordinance’s December 2025
 6 amendment and re-enactment. That amendment expanded legislative findings bearing on the
 7 Ordinance as a whole and revised a challenged safety gear provision. RJN 50, 52-54, 59, 62-69. The
 8 City cites no authority requiring a court to parse a serially amended statute to assess whether a
 9 challenge is timely based on a revision’s date. Doing so would run counter to justice. *See, e.g.,*
 10 *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (enjoining laws from 1800s that mandated racially
 11 segregated schools); *Loving v. Virginia*, 388 U.S. 1 (1967) (declaring decades-old statute facially
 12 invalid); *Lawrence v. Texas*, 539 U.S. 558 (2003) (same).

13 The City’s statute of limitations argument especially falters in the context of Plaintiffs’ free
 14 speech claims within the Ninth Circuit, which has expressed “serious doubts that a facial challenge
 15 under the First Amendment can ever be barred by a statute of limitations.” *Maldonado v. Harris*, 370
 16 F.3d 945, 955 (9th Cir. 2004); *Cuviello v. City of Vallejo*, 944 F.3d 816, 821-22 (9th Cir. 2019)
 17 (enjoining enforcement of ordinance in case filed nineteen years after enactment). The City turns
 18 instead to *Holt v. Cnty. of Orange*, 91 F.4th 1013 (9th Cir. 2024), which examined the accrual period
 19 on an arrest-related Fourth Amendment claim. *Holt* does not inform the analysis of free speech (or
 20 due process) claims which relate to laws that become applicable to a plaintiff years after enactment.

21 **B. Ordinance is Time, Place, Manner Restriction subject to intermediate scrutiny.**

22 For six years the City has construed the Ordinance to be a “time, place, and manner
 23 regulation as to public assemblies.” The City did so when it drafted the Ordinance’s title, its
 24 statement of “purpose,” each amendment, and all legislative findings. RJN 02, 05-07, 24, 30-32, 37,
 25 46-52, 55-58, 62, 65-67, 97-98, 101-02, 111, 114, 117, 120-22; DEFS 223. It has even described the
 26 safety gear bans as “restricted items for manner regulations as to public assemblies.” RJN 20.

27 The City now disingenuously tries to recast the Ordinance as “a conduct-regulating statute of
 28 general application.” Opp. at 15-16. Nonsense. The Ordinance applies *only* when people attend or

participate in a “demonstration, rally, counter-protest, picket line, march, or public assembly.” RJN 06, 24, 58, 68, 123; DEFS 18. These are classic conduct-based free speech activities where constitutional “protection is not limited to a parade’s banners and songs, but extends to symbolic acts.” *Hurley v. Irish-Am. Gay, Lesbian, & Bisexual Grp. of Bos.*, 515 U.S. 557, 558 (1995).

Out of the gate, the Ordinance’s explicit and sole application to public assemblies sets it apart from the City’s cases analyzing laws which were generally applicable to life in the public sphere. Opp. at 16-17. The courts in those cases necessarily had to perform a more searching inquiry as to whether heightened scrutiny was justified by a connection to expressive activity. *See Arcara v. Cloud Books*, 478 U.S. 697, 707 (1986) (First Amendment “not implicated” by enforcement of anti-prostitution statute against an “adult” bookstore where illicit sex acts occurred); *Edge v. City of Everett*, 929 F.3d 657, 660 (9th Cir. 2019) (First Amendment did not invalidate ordinance that applied generally to regulate lewd attire in commercial setting). Even *Vlasak v. Super. Ct.*, 329 F.3d 683, 688 (9th Cir. 2003)—a case that the City frequently invoked during deliberations, but which it now ignores—held that Los Angeles’s ban on sharp poles at protests was not a mere conduct regulation, but rather subject to heightened scrutiny because, “by its terms,” it regulated “‘demonstration equipment’ and arguably constrain[ed] ‘communicative conduct.’”

Where, as here, a restriction applies to public assemblies and infringes the time, place, or manner of protected free speech activity, the law is clear that intermediate scrutiny applies. *See Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 945 (9th Cir. 2011). Any restriction must: (1) be content neutral; (2) be narrowly tailored to serve a significant government interest; and (3) leave open ample alternative means of communication. *Id.* The test is functionally the same if the Court concludes under *U.S. v. O’Brien*, 391 U.S. 367, 376-77 (1968) that the Ordinance operates as a restriction on intermingled “‘speech’ and ‘nonspeech’ elements . . . combined in the same course of conduct.” The Ordinance cannot pass this scrutiny.

C. Ordinance’s Time, Place, Manner restrictions unreasonably burden lawful activities essential to the exercise of free speech, free assembly, and a free press.

Contrary to the City’s assertions, Plaintiffs do not claim an absolute “right to anonymity” or an absolute “right to wear combat gear and/or a face mask.” Opp. at 14, 25. Rather they maintain

1 that the public has a right to freedom of speech, assembly, association, and the press when attending
 2 protests in Modesto, and that the Ordinance’s overbroad restrictions on the manner in which they
 3 attend such protests substantially chills their rights. The terms “safety gear,” “masks,” and
 4 “anonymity” need not appear in the First Amendment to be constitutionally protected. The Bill of
 5 Rights’ “specific guarantees” have “penumbras, formed by emanations from those guarantees that
 6 help give them life and substance.” *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965). Said
 7 otherwise: “[I]t does not matter that the conduct which the state purports to penalize, criminally or
 8 civilly, is not itself what the First Amendment protects—it is the effect of such sanctions on the
 9 Constitution’s promises which will be scrutinized.” *Castro v. Super. Ct.*, 9 Cal. App. 3d 675, 687
 10 (1970); *Garcia v. Cnty. of Alameda*, 150 F.4th 1224, 1231 (9th Cir. 2025) (First Amendment
 11 scrutiny applies to acts restricting “predicate” actions for speech).

12 With respect to the Ordinance’s “effect,” Plaintiffs’ moving papers demonstrated that the
 13 Ordinance exposes people to great risk while attending and reporting on public assemblies, causing
 14 them to change or forego engagement in protected expressive activities. Here is a summary, which
 15 relies on individual declarations, medical and legal expert opinion, and the testimony of an asylum
 16 seeker who fears that their speech will subject them to retaliation in the U.S. and Saudia Arabia.

17 **Chilling Impact of Safety Gear Bans** (MPI at 24-28): Plaintiffs established that public
 18 assemblies can sometimes be dangerous for peaceful and law-abiding attendees; that much of the
 19 danger stems from law enforcement’s use of kinetic impact projectiles and chemical irritants; that
 20 these crowd control weapons have broadly diffuse impacts; and that contact with them can lead to
 21 debilitating health issues and even death. Plaintiffs further demonstrated that the safety gear banned
 22 by the Ordinance can lessen the risk of injury; that this safety gear would not be contraband but for
 23 the Ordinance; and that Plaintiffs and other members of the public want to carry this gear when
 24 attending protests, including as they seek to comply with dispersal orders under Penal Code § 409.

25 **Acute Impact on Press and Newsgathering Process** (MPI at 26-27): Plaintiffs established
 26 that journalists are vital to reporting on protests; that Penal Code § 409.7 protects their ability to
 27 continue reporting at a protest once a dispersal order is issued; that this role exposes them to an even
 28 greater degree of risk; that reporters’ ability to carry out their constitutionally and statutorily

protected reporting duties is diminished if forced to face crowd control weapons without safety gear; that at least one reporter has been injured by the use of crowd control weapons while reporting at a protest in Modesto; that the Ordinance bans items near universally-recommended in basic press safety gear kits; that at least one newsroom in Modesto has purchased such kits and would use them but for the Ordinance. *See also* ECF No. 25 (Brief of *Amici Curiae* Press Groups).

Chilling Impact of Mask Bans and Anonymous Political Speech (MPI at 28-29):

Plaintiffs established that people want to engage in peaceful, anonymous political speech while attending protests in Modesto; that being recorded by either the police or other members of the public while engaging in such protected activity can lead to doxxing, other privacy invasions, and retaliation harmful to one’s work, education, wellbeing, and immigration status. Plaintiffs further demonstrated that the City relies on surveillance cameras and drones, especially during protests.

Taken together, the Ordinance’s impacts are wide-ranging. The City nonetheless advances an anemic “assuming arguendo” defense. Opp. at 21-22. The Opposition essentially becomes an invitation to disregard controlling California caselaw, ignore relevant district court decisions across the country, and only follow the Second Circuit’s distinguishable (and non-binding) decision in *Klux Klan v. Kerik*, 356 F.3d 197 (2d Cir. 2004). Respectfully, the invitation should be declined.

In the Ninth Circuit, courts have invalidated manner restrictions that imposed far less of a burden on activities falling within the First Amendment’s penumbra. It ruled in *Edwards v. City of Coeur D’Alene*, 262 F.3d 856, 867 (9th Cir. 2001) that an ordinance burdened speech by banishing the attachment of hard “supports” to signs. In *ACLU of Nev. v. City of Las Vegas*, 466 F.3d 784, 799, 801 (9th Cir. 2006), it ruled that a ban on sidewalk tables burdened speech to the extent that tables “facilitate the dissemination of First Amendment speech.” In *Cuviello v. City of Vallejo*, 944 F.3d 816, 825, it ruled that a sound-amplification permit was too burdensome because bullhorns are “‘indispensable instruments’ of public speech.” The Ordinance’s impacts are at least as weighty.

The City’s biggest departure from controlling law is its disdain for the role that anonymity can play in protecting the right to free speech, free association, and free assembly. The City quotes dicta in *Kerik* for proposition that the Supreme Court has never recognized “a right to conceal one’s appearance at a public demonstration.” Opp. at 25. Never mind that that this is not Plaintiffs’ claim,

the Supreme Court has yet to rule either way on the precise question. Conversely, the Supreme Court *has* recognized in a long line of cases that “[p]ersecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all.” *Talley v. California*, 362 U.S. 60, 64 (1960); *see also NAACP. v. Alabama*, 357 U.S. 449, 462 (1958) (“Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association); *see also* MPI at 28-29.

Based on this authority, courts around the country have struck down mask bans, concluding that anonymity is essential to the free exercise of speech, association, and assembly. *See Am. Knights of Ku Klux Klan v. City of Goshen*, 50 F. Supp. 2d 835, 840 (N.D. Ind. 1999) (“[T]here can be no doubt that the ordinance, by prohibiting the wearing of masks for the purpose of concealing identity in public, burdens free speech and association rights.”); *Aryan v. Mackey*, 462 F. Supp. 90, 92 (N.D. Tex. 1978) (same). Closer to home is *Ghafari v. Mun. Ct.*, 87 Cal. App. 3d 255, 260 (1978), which invalidated California’s ban on face masks fifty years ago and which, as more fully discussed in Plaintiffs’ moving papers, controls the analysis of Plaintiffs’ state law claims. *In re Watts*, 298 F.3d 1077, 1082 (9th Cir. 2002). And although the City resists *Ghafari* as a case that predates the iPhone, Opp. at 26, it still bears on Plaintiffs’ federal claims because where, as here, a state’s “provisions offer more expansive protection than the federal constitution, [a federal court] must address the state constitutional claims in order to avoid the unnecessary consideration of the federal constitutional claims.” *Cuviello*, 944 F.3d at 826 (quotations omitted).

D. The burdens imposed by the Ordinance are not narrowly tailored.

The City identifies public safety, including making “community members feel safe” at public assemblies and minimizing acts of violence or vandalism, as substantial interests justifying the Ordinance. Opp. at 21. These interests in no way justify restrictions on the safety gear that journalists want to carry with them. They also turn on a profoundly unfair predetermination that everyone in a mask or safety gear is intent on confrontation and violence. Gillespie ¶¶ 7, 9, 16-17, 21. And the community interest is suspect too. Government officials may not restrict the manner in which people gather based on how offensive the public finds their presence. *Compare id.* ¶ 18 with *Coates v. City of Cincinnati*, 402 U.S. 611, 615 (1971) & *Nat’l Socialist Party of Am. v. Vill. of*

1 *Skokie*, 432 U.S. 43, 44 (1977); *Amalgamated Transit Union Loc. 85 v. Port Auth. of*
 2 *Allegheny Cnty.*, 513 F. Supp. 3d 593, 598-99 (W.D. Pa. 2021) *aff'd* (3d Cir. 2022) (striking mask
 3 ban because “speculative fear” of innocuous speech not sufficient to justify restriction).

4 Notwithstanding the problems plaguing the City’s “ends,” the Ordinance also fails the
 5 “ends/means” test. Its bans are far “greater than is essential to the furtherance” of Modesto’s public
 6 safety interest. *See O’Brien*, 391 U.S. at 377. The California Penal Code provides the City with
 7 numerous precise, and constitutionally vetted, tools for public safety. *See MPI* at 30 (collecting
 8 statutes). It allows law enforcement to arrest any individuals who use the items criminalized under
 9 the Ordinance for criminal purposes. *See Pen. Code. § 185*. The availability of this “legal
 10 armamentarium” was dispositive in *Ghafari*, as it should be here too. 87 Cal. App. at 816.

11 In rejecting the sufficiency of these alternatives, the City walks into another constitutional
 12 buzzsaw. It states that “the penal codes offered by Plaintiffs only come into play after health and
 13 safety issues have arisen.” *Opp.* at 21. But as *Collins v. Jordan*, 110 F.3d 1363, 1372 (1965) made
 14 clear, law enforcement anticipating violence at a protest can only arrest “those who actually engage
 15 in [unlawful] conduct, rather than [] suppress legitimate First Amendment conduct as a prophylactic
 16 measure.” The City may prefer the ease of broadly banning masks and basic safety gear, but that
 17 does not make it lawful. “A painted line on the sidewalk is easy to enforce, but the prime objective
 18 of the First Amendment is not efficiency.” *McCullen v. Coakley*, 573 U.S. 464, 495 (2014).

19 **E. Ordinance fails intermediate scrutiny for the separate and independent reason**
 20 **that it unreasonably infringes right to engage in symbolic expressive speech.**

21 The Ordinance burdens protected free speech for yet another reason: the ban on face masks
 22 restricts symbolic expressive speech. *MPI* at 29-30. District courts nationwide have reached the
 23 intuitive conclusion that masks can be expressive. *See e.g., Am. Knights of Ku Klux Klan v. City of*
 24 *Goshen*, Ind., 50 F. Supp. 2d 835, 842 (N.D. Ind. 1999) (finding that a mask ban was a “direct
 25 regulation of the content of speech or expression”); *Knights of the Ku Klux Klan v. Martin Luther*
 26 *King, Jr. Worshippers*, 735 F. Supp. 745, 751 (M.D. Tenn. 1990) (masks are a form of “symbolic
 27 political expression”); *Aryan*, 462 F. Supp. at 92 (masks “have become a symbol of opposition”).
 28

Even *Kerik* acknowledged that masks are expressive—a conclusion noted approvingly by *Frudden v. Pilling*, 742 F.3d 1199 (9th Cir. 2014), which cited its observation that “the regalia of the American Knights, including the robe, mask, and hood, are expressive.” *Id.* at 1204 n. 1 (quoting *Kerik*, 356 F.3d at 206); *see also U.S. v. Mongol Nation*, 370 F. Supp. 3d 1090, 1101 (C.D. Cal. 2019) (same). Thus, *Kerik* reaches only the narrow, fact-specific conclusion that because other articles of the KKK’s infamous regalia—i.e., the hood and the robe—carried the same message as the mask, the mask’s “expressive force” was “redundant.” *Kerik*, 356 F.3d at 206.

Here, Plaintiffs submitted expert testimony about the role fashion and dress have played in social movements throughout the last century. Ford ¶¶ 14-19. They also provided examples of the symbolic speech that the Ordinance sweeps up. The record demonstrates that these messages are sufficiently particularized and understood. MPI at 29-30; *Hurley*, 515 U.S. at 569 (disagreeing with *Spence v. Washington*, 418 U.S. 405 (1974) to conclude “a narrow, succinctly articulable message is not a condition of constitutional protection”).

II. Plaintiffs Established Likelihood of Success on Due Process Claims

The City belittles Plaintiffs’ three due process claims as a “menagerie” and spends little time on their merits. Opp. at 27-29. These claims demand a much closer review. Where, as here, due process concerns implicate free expression, courts must require a “[p]recision of regulation” and cannot assume that “ambiguities will be resolved in favor of adequate protection of First Amendment rights.” *NAACP v. Button*, 371 U.S. 415, 438 (1963); MPI at 31-33.

The Ordinance is void for vagueness: Plaintiffs do not seek “mathematical certainty,” but they do require clarity. The Ordinance provides little and the Opposition muddies it further. To take one example: the City’s brief claims that the costume “exception makes clear that it allows face coverings that are necessary to convey the expressive message of the costume, such as an inflatable dancing frog costume, which cannot be worn without the mask as it is not separate and removable from the overall costume.” Opp. at 28. The City appears to embrace a haphazard standard that turns on either a fraught content-based determination of a costume’s expressive message, or a more inane assessment of how something is stitched and glued together. This arbitrary line-drawing is problematic because it “entrust[s] lawmaking to the moment-to-moment judgment of the policeman

on his beat.” *Kolender v. Lawson*, 461 U.S. 352, 359 (1983) (quotations omitted).

The Ordinance invades due process liberty interests: The City reads *Gatto v. County of Sonoma*, 98 Cal. App. 4th 744 (2002) in search of a First Amendment standard and discards it in the pile to which it relegates other binding state law cases. Opp. at 30 n.10. But what *Gatto* supplies is a due process backstop to the Ordinance’s inherent arbitrariness. The *Gatto* court, examining both federal and state law, struck down a county fair’s dress code not because the attire at issue was protected by the First Amendment, but because it was “nevertheless a form of individual expression . . . constitutionally entitled to some protection against arbitrary governmental suppression.” *Gatto*, 98 Cal. App. 4th. at 772. Here, the Ordinance criminalizes anonymity but simultaneously employs a confusing and discretionary rubric that permits masks, costumes, and accessories that completely obscure identity. See Verner-Crist ¶ 17; compare Ramirez Ex. A (picture of face fully obscured by keffiyeh wrapped around head) with Opp. at 18 (explaining compliance issues).

The Ordinance violates equal protection: Nothing in the Opposition changes the unlawful dichotomy that Plaintiffs highlighted in their moving papers. The Ordinance violates equal protection because it divides the public into two groups and punishes them based on expressive purpose: one group may wear face coverings at a “theatrical” or “entertainment event” (or “the functional equivalent thereof” – whatever that may mean); but the other may not do so at an assembly to communicate on public issues. *Ghafari* ruled that this differential treatment violated the law. *Ghafari*, 87 Cal. App. 3d at 265; see also *Carey v. Brown*, 447 U.S. 455, 461 (1980); cf. *Kerik*, 205 F.3d at 210 (rejecting claim where groups not similarly situated in permit process).

III. Plaintiffs Demonstrated Irreparable Harm

Unless this Court issues an injunction, the Ordinance will continue chilling the constitutional rights of Plaintiffs, the press, and the public alike. The City is wrong to suggest that the Ordinance’s impact does not rise to irreparable harm. Opp. at 14. Rather, in the free speech context, irreparable harm “is relatively easy to establish . . . because the party seeking the injunction need only demonstrate the existence of a colorable First Amendment claim.” *Hubbard v. City of San Diego*, 139 F.4th 843, 853 (9th Cir. 2025). Plaintiffs have more than done so. See *Washington v. Trump*, 145 F.4th 1013, 1036 (9th Cir. 2025) (injunctive relief not dependent on “magnitude” of injury).

1 Plaintiffs have shown that there are upcoming protests at which people want to wear certain
 2 face coverings and safety gear, but that they fear doing so because of the City’s promises to enforce
 3 the Ordinance. Diaz ¶¶ 17, 27; Gerardo ¶ 11; Ramirez ¶ 22; Leiva ¶ 15; *see also* ECF No. 10
 4 (Answer) ¶¶ 19, 153, 157; Gillespie ¶¶ 12, 27. As discussed *supra*, Plaintiffs have provided
 5 substantial evidence (not mere allegations) establishing that the Ordinance deters the exercise of
 6 their fundamental freedoms at public assemblies and also diminishes the press’s ability to carry out
 7 constitutionally and statutorily-protected activities—an injury that the City fails to even
 8 acknowledge in disputing irreparable harm. *Compare* MPI at 33-34 *with* Opp. at 14-15.

9 The City makes much of the fact that it has yet to arrest anyone under the current version of
 10 the Ordinance. Gillespie ¶¶ 24-30. But the threat of enforcement is what causes irreparable harm—
 11 not the fact of it. *See Cuiello*, 944 F.3d at 832-33. A “plaintiff need not risk prosecution in order to
 12 challenge a statute” especially, as here, when “protected speech may be at stake.” *Wolfson v.*
 13 *Brammer*, 616 F.3d 1045, 1060 (9th Cir. 2010). The City also questions Plaintiffs’ harm because it
 14 claims they have not applied for any permits. Opp. at 14-15. But permits are not required in Modesto
 15 and the City, having made it more difficult to organize, attend, and report on protests, cannot use the
 16 absence of protests to crow: “no problem here.” People can be so fearful of coming within a
 17 sanction’s broad sweep that they “limit[] ‘their behavior to that which is unquestionably safe.’”
 18 *Castro*, 9 Cal. App. 3d at 683 (citing *Keyishian v. Bd. of Regents of N. Y.*, 385 U.S. 589, 609 (1967)).

19 **IV. The Balance of Equities and Public Interest Favor an Injunction**

20 The City miscalculates the public interests at stake and Plaintiffs’ likelihood of success on
 21 the merits of their constitutional claims tips the public interest sharply in their favor. *Riley’s Am.*
 22 *Heritage Farms v. Elsasser*, 32 F.4th 707, 731 (9th Cir. 2022); *Cuiello*, 944 F.3d at 834. In six
 23 years, the City has arrested just five people under the Ordinance, all on a single day. Enjoining the
 24 Ordinance will not cause it harm. Other tools exist to maintain public safety. Minimal harm is
 25 implicitly conceded the bond waiver was not contested.

26 **CONCLUSION**

27 Plaintiffs respectfully request that the Court grant their Motion for Preliminary Injunction.
 28

1 Date: June 19, 2026

Respectfully Submitted,

2 /s/ Chessie Thacher

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