

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 A full recitation of the factual background of this case is set forth fully in the Court’s prior
3 order. (ECF No. 22.) In short, the instant case arises from Defendants’ alleged failure to
4 discharge their duties during Sacramento’s triple-digit heat wave to protect the unhoused, one of
5 society’s most vulnerable populations. (See ECF No. 1.) This case began on June 24, 2022,
6 when Plaintiffs filed the operative complaint and a motion for a TRO. (ECF No. 1.) After setting
7 a briefing schedule and reviewing the parties’ filings, the Court granted in part and denied in part
8 Plaintiffs’ motion on July 29, 2022. (ECF No. 22.) The Court granted the motion only “with
9 respect to Plaintiffs’ request to enjoin the City and all of its officers, agents, servants, employees,
10 attorneys, and all persons under their direction and control, from clearing encampments belonging
11 to the unhoused.” (*Id.* at 23.) The preliminary injunction remained in effect for 28 days. (*Id.*)
12 Plaintiffs filed a motion to renew or extend the preliminary injunction on August 24, 2022. (ECF
13 No. 24.) The Court granted Plaintiffs’ motion and extended the preliminary injunction through
14 September 23, 2022. (ECF No. 33.) On August 1, 2023, Plaintiffs filed the instant motion for a
15 TRO. (ECF No. 36.)

16 **II. STANDARD OF LAW**

17 A temporary restraining order is an extraordinary and temporary “fix” that the court may
18 issue without notice to the adverse party if, in an affidavit or verified complaint, the movant
19 “clearly show[s] that immediate and irreparable injury, loss, or damage will result to the movant
20 before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The purpose
21 of a temporary restraining order is to preserve the status quo pending a fuller hearing. See Fed. R.
22 Civ. P. 65. It is the practice of this district to construe a motion for temporary restraining order as
23 a motion for preliminary injunction. Local Rule 231(a); *see also Aiello v. One West Bank*, No.
24 2:10-cv-0227- GEB-EFB, 2010 WL 406092 at *1 (E.D. Cal. Jan. 29, 2010) (“Temporary
25 restraining orders are governed by the same standard applicable to preliminary injunctions.”).

26 Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear
27 showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555
28 U.S. 7, 22 (2008) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)). “The

1 purpose of a preliminary injunction is merely to preserve the relative positions of the parties until
2 a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)
3 (emphasis added); *see also Costa Mesa City Employee’s Assn. v. City of Costa Mesa*, 209 Cal.
4 App. 4th 298, 305 (2012) (“The purpose of such an order is to preserve the status quo until a final
5 determination following a trial.”) (internal quotation marks omitted); *GoTo.com, Inc. v. Walt*
6 *Disney, Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (“The status quo ante litem refers not simply to
7 any situation before the filing of a lawsuit, but instead to the last uncontested status which
8 preceded the pending controversy.”) (internal quotation marks omitted). In cases where the
9 movant seeks to alter the status quo, preliminary injunction is disfavored and a higher level of
10 scrutiny must apply. *Schrier v. Univ. of Co.*, 427 F.3d 1253, 1259 (10th Cir. 2005). Preliminary
11 injunction is not automatically denied simply because the movant seeks to alter the status quo, but
12 instead the movant must meet heightened scrutiny. *Tom Doherty Associates, Inc. v. Saban*
13 *Entertainment, Inc.*, 60 F.3d 27, 33–34 (2d Cir. 1995).

14 “A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed
15 on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief,
16 [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.”
17 *Winter*, 555 U.S. at 20. A plaintiff must “make a showing on all four prongs” of the *Winter* test
18 to obtain a preliminary injunction. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135
19 (9th Cir. 2011). In evaluating a plaintiff’s motion for preliminary injunction, a district court may
20 weigh the plaintiff’s showings on the *Winter* elements using a sliding-scale approach. *Id.* A
21 stronger showing on the balance of the hardships may support issuing a preliminary injunction
22 even where the plaintiff shows that there are “serious questions on the merits . . . so long as the
23 plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the
24 public interest.” *Id.* Simply put, Plaintiff must demonstrate, “that [if] serious questions going to
25 the merits were raised [then] the balance of hardships [must] tip[] sharply in the plaintiff’s
26 favor,” in order to succeed in a request for preliminary injunction. *Id.* at 1134–35 (emphasis
27 added).

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1 **III. ANALYSIS**

2 The instant motion for a TRO is based on nearly identical factual and legal grounds as the
3 motion for a TRO the Court granted this time last year. As in their prior motion, Plaintiffs again
4 contend the City is clearing homeless encampments during periods of extreme heat. (ECF No. 36
5 at 1–2.) Plaintiffs further contend the City “offered” to relocate the displaced individuals to its
6 “Safeground” site at Miller Park, a location where individuals are crowded together in tents with
7 no shade. (*Id.* at 3.) To support these arguments, Plaintiffs provide declarations from unhoused
8 individuals who were subject to sweeps in mid-July 2023. (ECF No. 36-3 at 25–42.)

9 In their motion, Plaintiffs discuss the political developments surrounding this issue since
10 the Court’s last order, which they argue have prevented informal resolution of this matter. These
11 developments include: a new sidewalk ordinance; a measure that allows any person to initiate a
12 lawsuit against the City for failure to clear homeless encampments; expansion of area within City
13 limits defined as “critical infrastructure” where camping is banned; and public demands from the
14 Presiding Judge of the Sacramento Superior Court and the District Attorney calling for increased
15 police presence at and around the main courthouse to enforce code violations. (ECF No. 36 at 3.)

16 Plaintiffs also provide evidence showing it is forecasted that temperatures of 90 degrees
17 Fahrenheit or greater will occur on 21 days in the month of August 2023. (*Id.* at 5 (citing ECF
18 No. 36-2 at 11–16.)) Plaintiffs argue the City in its Homelessness Response Protocol from
19 August 2022 defined temperatures above 90 degrees Fahrenheit as “excessive heat” and listed it
20 as a factor to be considered when determining whether to clear an encampment. (*Id.* (citing ECF
21 No. 36-2 at 8.)) Plaintiffs argue that despite these protocols, the City continues to conduct
22 widespread clearing of encampments, which displaces unhoused individuals from areas of
23 protection from the sun and heat into more exposed areas. (*Id.*)

24 For these reasons, Plaintiffs seek to enjoin the City from clearing encampments through
25 mid-September 2023, when temperatures are expected to fall below 90 degrees Fahrenheit. (*Id.* at
26 15–16.) Plaintiffs also seek to enjoin the City from preventing Union representatives, advocates,
27 and community supported entry to the Miller Park “Safeground” so that they may assist residents
28 in investigating and alleviating the dangerous conditions therein. (*Id.*)

1 Because Plaintiffs’ motion is rooted in substantially analogous facts and legal arguments
2 to their previous motions, the Court’s analysis remains largely the same as that of its previous
3 orders. In its previous orders, the Court addressed the *Winter* factors in detail. Due to the
4 similarities discussed above, the Court adopts this previous reasoning herein. (*See* ECF Nos. 22,
5 33.) Based on this reasoning and Plaintiffs’ representations in the instant motion, the Court again
6 concludes Plaintiffs have satisfied the *Winter* factors with respect to the clearing of encampments.
7 Specifically, the Court finds:

8 1. As to likelihood of success on the merits, the Court concludes for the same reasons
9 discussed in its prior orders, Plaintiffs have shown a likelihood of success on a Fourteenth
10 Amendment state-created danger claim. Put simply, Plaintiffs have presented sufficient evidence,
11 at this stage, to demonstrate the City’s clearing of encampments constitutes “affirmative conduct”
12 that places unhoused individuals at an increased risk of the “known and obvious danger” of
13 exposure to extreme heat. (ECF No. 22 at 13–14; ECF No. 33 at 9.)

14 2. As to imminent and irreparable harm, the Court concludes Plaintiffs’ evidence
15 forecasting excessive heat for the upcoming weeks and detailing the risks of heat-related deaths
16 and illnesses is sufficient to show that irreparable harm will result in the absence of injunctive
17 relief. (ECF No. 22 at 20–21; ECF No. 33 at 10.)

18 3. As to the balancing of equities and public interest, the Court previously concluded that
19 the City’s interest in clearing encampments during extreme heat is far outweighed by Plaintiffs’
20 interest in the health and welfare of unhoused individuals. (ECF No. 22 at 21–22; ECF No. 33 at
21 15–17.) This finding remains true today and the Court reaffirms it here.

22 **IV. CONCLUSION**

23 For the foregoing reasons, the Court GRANTS Plaintiffs’ Motion for a TRO with respect
24 to Plaintiffs’ request to temporarily enjoin the City and all of its officers, agents, servants,
25 employees, attorneys, and all persons under their direction and control, from clearing
26 encampments belonging to the unhoused. (ECF No. 36.) The Court DENIES Plaintiffs’ motion
27 in all other respects. The TRO shall remain in effect for fourteen (14) days.

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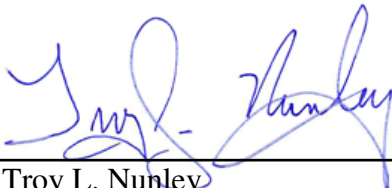
1 The Court sets the following briefing schedule: Defendants shall file an opposition not
2 later than 5:00 p.m. on August 7, 2023, and Plaintiffs may file a reply not later than 5:00 p.m. on
3 August 9, 2023. In their briefing, the parties shall address what effect, if any, the Ninth Circuit
4 decision in *Johnson v. City of Grants Pass* has on the instant case. 72 F.4th 868 (9th Cir. 2023).

5 In addition, in recognition that the TRO is broad, the Court ORDERS the parties to meet
6 and confer and file a joint statement regarding possible ways to narrow the scope of any future
7 injunctions to best balance the competing interests at play. For example, the parties should
8 discuss how to prioritize exceptions for “critical infrastructure” for the City of Sacramento as
9 defined by the City and the federal government. The parties shall file this joint statement not later
10 than 5:00 p.m. on August 9, 2023.

11 After considering the parties’ filings, the Court will determine whether to extend, modify,
12 or terminate the injunction.

13 IT IS SO ORDERED.

14 Date: August 2, 2023

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17 Troy L. Nunley
18 United States District Judge
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