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LA County decides to play nice on homeless issue while SF is defiant

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While San Francisco Mayor London Breed, seizing on language in a 9th U.S. Circuit Court of Appeals order from three weeks ago, is vowing to start enforcing statutes against public camping, Los Angeles County has reached a revised settlement with homeless plaintiffs' attorneys.

The contrast in approaches, and rhetoric, between the two cities is stark. Los Angeles County promised to spend up to an extra \$850 million for thousands of additional beds for homeless people with the support of plaintiffs' lawyers.

In San Francisco, a plaintiffs' lawyer called Breed's announcement "political theater" and predicted the city would violate a preliminary injunction against its policies concerning homeless people sitting or lying on sidewalks and "bagging and tagging" their belongings, vowing to fight them in court.

U.S. District Judge David O. Carter of Santa Ana, an appointee of President Bill Clinton, has rejected two previous settlements between Los Angeles city and county and plaintiffs' attorneys, in part because, he told attorneys, the deal gave him "absolutely no oversight and ... no enforcement."

The new deal, reached Monday, adds 3,000 new beds for people with severe mental illness and substance abuse problems, as well as a monitor — former U.S. Magistrate Judge Jay C. Gandhi, now at JAMS — who attorneys hope will address

Carter's concerns about oversight.

The deal also includes 450 subsidies for residential care at licensed adult facilities. The number of beds has increased dramatically since the first settlement, from 300 beds to 3,000, and Gandhi will track the agreement into 2027. *LA Alliance for Human Rights et al. v. County of Los Angeles et al.*, 20-CV-02291 (C.D. Cal., filed March 10, 2020).

The new deal would cost the county more than \$1 billion, a large financial increase over the previous settlement, according to the county, as well as a monitor.

"While Judge Gandhi already has some background because of his involvement in the settlement discussions, he is committed to getting up to speed and conducting meaningful assessments, including anticipated on-site visits, so that he can provide comprehensive information to the court," attorneys for the county and the LA Alliance for Human Rights wrote.

A hearing on the revised settlement is scheduled Thursday morning.

Mira Hashmall, a partner with Miller Baroness who represents Los Angeles County, hailed the tentative deal in a statement.

"The previous settlement the parties presented to the court already provides 1,000 new beds and enhanced services for people experiencing homelessness with substance use disorder or mental illness," she wrote. "We hope the new settlement, which is set for hearing Thursday, will end this three-year old case and allow us to focus our funding and efforts on alleviating the homelessness crisis."

Elizabeth A. Mitchell, a partner with Umhofer, Mitchell & King LLP who represents the plaintiffs, also praised the agreement in a statement: "The agreement that was submitted to the court reflects the months of collaboration between the parties to address Los Angeles' homeless crisis at a meaningful scale, especially those with serious mental illness and substance use disorder, and rounds out the goals of the alliance: shelter for all, treatment and services for all, and clean and safe streets for all."

While Los Angeles officials touted the deal's virtues, San Francisco city officials and advocates for homeless people are still clashing over policies that attorneys for the plaintiffs say violate their Eighth and Fourth Amendment rights.

Mayor Breed announced Monday that the city would "resume enforcement of laws that we've been limited from enforcing for the past nine months," after a U.S. magistrate judge in Oakland granted a preliminary injunction against attorneys for homeless plaintiffs. She added that city public works employees and police officers would be given updated training so San Francisco stays within the bounds of U.S. Magistrate Judge Donna M. Ryu's December 2022 injunction without stating when the city's statutes would be enforced.

On Tuesday, Zal K. Shroff — interim legal director of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area — predicted city employees would resume violating the preliminary injunction in short order and vowed to take San

Francisco to court if they did so.

"We're just going to see mass arrests of unhoused people," Shroff predicted in a phone interview. "It's going to trigger some litigation before the district court."

Last month, Ryu rejected a bid by Shroff and other plaintiffs' lawyers with the American Civil Liberties Union and Latham & Watkins LLP to enforce the preliminary injunction, which they said was being violated, and appoint a special master to monitor it. *Coalition on Homelessness et al. v. City and County of San Francisco et al.*, 22-CV-05502 (N.D. Cal., filed Sept. 27, 2022).

The magistrate judge denied part of plaintiffs' motion claiming San Francisco was not complying with her order concerning alleged Eighth Amendment violations for threatening to enforce laws against sitting, lying or sleeping on public property. But she expressed more concern about the plaintiffs' claims that city workers are taking or destroying homeless people's personal property.

Ryu ordered the city to provide more information about training and the number of city employees who have dealt with homeless people. The city filed papers in response on Friday.

Breed did not respond Tuesday about her announcement, which ran on Medium.

San Francisco City Attorney David Chiu reiterated a news release he issued after a 9th Circuit panel denied the city's motion for a modification of the preliminary injunction. *Coalition on Homelessness v.*

City and County of San Francisco, 23-15087 (9th Circ., filed Jan. 23, 2023).

The city attorney's office added that the 9th Circuit order acknowledges that people are not involuntarily homeless if they have declined a specific offer of available shelter or otherwise have access to such shelter or the means to obtain it.

Looming over the litigation in both cities is a writ of certiorari filed with the U.S. Supreme Court by Grants Pass, Oregon against anti-camping ordinances there that has drawn support from California Gov. Gavin Newsom, the California State Association of Counties and the League of California Cities.

Senior U.S. District Judge Roslyn O. Silver of the District of Arizona,

an appointee of President Bill Clinton sitting on the 9th U.S. Circuit Court of Appeals by designation, ruled that Grants Pass cannot enforce anti-camping and other ordinances against people without residences when the city doesn't have enough shelter spots.

"The anti-camping ordinances prohibit plaintiffs from engaging in activity they cannot avoid," Silver wrote. "The civil citations issued for behavior plaintiffs cannot avoid are then followed by a civil park exclusion order and, eventually, prosecutions for criminal trespass."

A bid by the small Oregon city to reconsider Silver's decision en banc was rejected by a narrow margin in July, with all 13 active appointees of Republican presidents dissenting.

Theane D. Evangelis, a partner with Gibson, Dunn & Crutcher LLP, highlighted the amicus support from California and other cities and counties in the 9th Circuit on Tuesday. *City of Grants Pass, Oregon v. Johnson*, 23-175 (S. Ct., filed Aug. 22, 2023).

"As hundreds of amici have made clear in two dozen briefs filed in the Supreme Court, the Ninth Circuit's decisions in this case and *Martin v. Boise* have contributed to the growing problem of encampments in cities across the West," Evangelis wrote.

"These decisions are legally wrong and continue to tie the hands of local governments in their efforts to devise solutions to the complex problem of homelessness," she added.

Shroff, on the opposite side of the argument, said if the Supreme Court accepts the case and reverses Grants Pass and *Martin v. City of Boise*, 2018 DJDAR 8871 (9th Circ., filed Oct. 29, 2015), the legal battles in California cities should change dramatically.

"If the Supreme Court overturns the Martin doctrine and says un-housed people can be cited, fined and arrested just for being homeless, that would be a disaster," he opined.

"It's mind-blowing what California officials are calling on the Supreme Court to do," Shroff added. "Handcuffs cannot solve a housing problem."

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