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10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION  
13

14 RAMONA MAYON,  
15 Petitioner,  
16 vs.  
17 CITY AND COUNTY OF SAN  
18 FRANCISCO,  
19 Respondent.

Case No. CGC-20-588010

**CITY AND COUNTY OF SAN FRANCISCO'S  
OPPOSITION TO PETITIONER'S MOTION  
FOR A TEMPORARY RESTRAINING ORDER**

Hearing Date: January 6, 2021  
Hearing Judge: Hon. Ethan P. Schulman  
Time: 11:00 a.m.  
Place: Dept. 302

Action Filed: November 25, 2020

Attachments:  
--Request for Judicial Notice  
--Declaration of R. Andrew Cox

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**TABLE OF AUTHORITIES**

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**Federal Cases**

*Hallstrom v. City of Garden City*  
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*Miralle v. City of Oakland*  
(N.D. Cal., Nov. 28, 2018, No. 18-CV-06823-HSG) 2018 WL 6199929 .....9

*South Dakota v. Opperman*  
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**State Statutes & Codes**

Cal. Code Civ. Proc. § 527(c)(1) .....7, 8

**San Francisco Statutes, Codes & Ordinances**

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**Other References**

1 SFMTA, *Oversize Vehicle Overnight Parking Restriction Pilot Evaluation and*  
2 *Recommendations*, Nov. 2013, available at [https://www.sfmta.com/sites/default](https://www.sfmta.com/sites/default/files/reports-and-documents/2017/12/ov_pilot_evaluation_fall_2013_0.pdf)  
3 [/files/reports-and-documents/2017/12/ov\\_pilot\\_evaluation\\_fall\\_2013\\_0.pdf](https://www.sfmta.com/sites/default/files/reports-and-documents/2017/12/ov_pilot_evaluation_fall_2013_0.pdf) .....5  
4 SFMTA, *Waivers for people experiencing homelessness or low-income and*  
5 *reduction for first time tow*, available at [https://www.sfmta.com/getting-around/](https://www.sfmta.com/getting-around/drive-park/towed-vehicles/reduced-fees-first-time-tow-and-low-income-individuals)  
6 [drive-park/towed-vehicles/reduced-fees-first-time-tow-and-low-income-individuals](https://www.sfmta.com/getting-around/drive-park/towed-vehicles/reduced-fees-first-time-tow-and-low-income-individuals)  
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1 Respondent City and County of San Francisco files this opposition to Petitioner’s Application  
2 for a Temporary Restraining Order.

### 3 INTRODUCTION

4 Petitioner seeks a temporary restraining order that would either: (1) prevent the City from  
5 towing Petitioner’s illegally parked, non-operational vehicle that has an expired registration; or, (2)  
6 order that, if the City does tow the vehicle, that the City must waive all fees and return the vehicle to  
7 her. The application should be denied for several reasons.

8 First, Petitioner has not established any threat of immediate and irreparable injury. Petitioner  
9 has not shown that she faces any imminent risk that the vehicle will be towed. Petitioner notes that  
10 she received a ticket from SFPD for having an expired registration, but she provides no evidence that  
11 she faces any imminent risk that SFPD will tow her vehicle. (TRO App. at 3.) Indeed, the SFPD is  
12 generally not towing vehicles at this time for having expired registrations. (Cox Dec. ¶¶ 2-3, Ex. A.)

13 Second, there is no legal basis to grant Petitioner the relief she seeks. The City tows vehicles  
14 for many reasons, including (but not limited to) when the vehicle is causing a public safety hazard, is  
15 blocking a driveway or crosswalk, or is impeding traffic. (Cox Dec. Ex. A.). The relief Petitioner  
16 seeks – an order preventing the City from towing her vehicle for any reason – would prevent the City  
17 from towing her vehicle even when towing the vehicle is necessary to protect public safety under the  
18 community caretaking doctrine. Petitioner is not entitled to that extraordinary relief. Further, by her  
19 own admission, Petitioner’s vehicle is not operational, has an expired registration, and is illegally  
20 parked on the Great Highway in violation of Section 7.2.54 of the San Francisco Transportation  
21 Code.<sup>1</sup> Petitioner does not contest any of those legal violations. Instead, she asks that the Court enjoin  
22 the City from enforcing the law because she is homeless, wishes to live in the vehicle, and does not

23  
24 <sup>1</sup> Section 7.2.54, entitled “Large Vehicle Parking Restrictions” provides that it is an infraction  
25 to “Park a vehicle over twenty-two feet in length or seven feet in height, or camp trailers, fifth-wheel  
26 travel trailers, house cars, trailer coaches, mobilehomes, recreational vehicles, or semi-trailers as  
27 defined by the California Vehicle Code and Health and Safety Code, between the hours of 12 a.m. and  
28 6 a.m. when Municipal Transportation Agency signs are posted giving notice. This section shall be  
operative on March 31, 2013.” The portion of the Great Highway at issue is subject to the Large  
Vehicle Parking Restriction. (See RJN Ex. B, also available at  
[https://www.sfmta.com/sites/default/files/reports-and-documents/2017/12/ov\\_pilot\\_evaluation\\_fall\\_2013\\_0.pdf](https://www.sfmta.com/sites/default/files/reports-and-documents/2017/12/ov_pilot_evaluation_fall_2013_0.pdf).)

1 want to accept the offers of shelter she has received from the City. (TRO App. at 3.) Petitioner does  
2 not provide any legal authority for her assertion that the City should be enjoined from enforcing State  
3 and local laws merely because Petitioner is homeless and has rejected offers of shelter.

4 Accordingly, Petitioner has not shown that she is entitled to a temporary restraining order. The  
5 Application for a TRO should be denied.

#### 6 **FACTS**

7 The Petition concerns the resolution of an encampment located at Great Highway and Balboa  
8 Avenue, which took place on November 18, 2020. A TRO concerning that encampment resolution  
9 was previously denied by the Court on December 2, 2020.

10 In this TRO application, Petitioner asks the Court to “restrain the City from depriving her of  
11 the RV home that was brought to her on December 23, 2020.” (TRO App. at 2.) Petitioner states that  
12 she had to remove her tent because of a “sweep” on December 10, 2020, and slept in her car until  
13 December 24, 2020, when her “27’ class c motorhome was towed to another location on Great  
14 Highway” by AAA. She states that, although the motorhome is not currently operational and has an  
15 “out-of-date” registration sticker, a mobile mechanic is scheduled to come on Wednesday, December  
16 30, 2020. (*Ibid.*). After that, Petitioner “fully intends to move it immediately to a smog station, etc.,”  
17 but she acknowledges that she may not be able to do so because the motorhome is “a 1996 vehicle that  
18 has been sitting up in rough conditions.” (*Ibid.*). She notes that she has received a “hostile reception”  
19 from the neighbors who have repeatedly called the police station to request enforcement of the  
20 oversized vehicle parking restrictions. (*Id.* at p. 3). She also states that she received a ticket for  
21 having an expired registration. (*Ibid.*) Although she does not claim that any City official has told her  
22 that her motorhome will be towed by the City, she states that, by the time of the hearing on January 6,  
23 2021, she “expects to have suffered the loss of her home or to have moved it under her own power by  
24 then.” (TRO App. at 2.) If the vehicle is towed, Petitioner asks “preemptively for the fees to be  
25 waived and it to be returned.” (*Ibid.*) She states that she wants to “go to a rural setting within the  
26 week if everything works out on this end,” but if not, she wants the Court to “unravel whatever  
27 happens” (if anything) to her motorhome. (*Id.* at p. 3.)

1 In a document served on the City’s counsel on January 5, 2021, Petitioner asserts that she has  
2 scheduled a mechanic to “begin” work on her vehicle “next Saturday.” (Mayon Dec. at p. 3.) She  
3 reports continuing hostility from neighbors, who she accuses of discriminating against her based on  
4 her status as a “vehicle-dweller.” (*Id.* at pp. 2,5.) She states that she plans to return to the Sacramento  
5 area (where she lived before the pandemic), but only if she can get \$4,520 to repair the RV, pay for an  
6 “Elite Package” at “Thousand Trails,” and obtain the services of a driver. (“Mayon RV Rehousing  
7 Plan” at pp. 4-5.)

### 8 ARGUMENT

9 The availability of interim injunctive relief depends on two interrelated factors.

10 First, the applicant must demonstrate a “threat of immediate and irreparable injury” that would  
11 justify injunctive relief. (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d  
12 131, 138.) For a TRO, the showing for required harm is even more pointed than the showing required  
13 for a preliminary injunction: The requisite immediate and irreparable injury harm must occur in the  
14 time frame that it would take for a hearing on a noticed motion. The statute requires a showing “that  
15 great or irreparable injury will result to the applicant before the matter can be heard on notice.”  
16 (C.C.P., § 527(c)(1).)

17 Second, an applicant may not obtain interim injunctive relief unless it establishes a reasonable  
18 probability that it ultimately will prevail on the merits. (*Cohen v. Board of Supervisors* (1985) 40  
19 Cal.3d 277, 286.)

20 Even if the applicant satisfies its threshold burden of establishing immediate and irreparable  
21 injury, a court must balance that injury against the injury the defendant and the public would suffer if  
22 injunctive relief were issued. (*Socialist Workers etc. Com. v. Brown* (1975) 53 Cal.App.3d 879, 888-  
23 889.) And where an applicant seeks to enjoin action by government, the applicant faces an even  
24 greater burden to demonstrate that its claim of harm outweighs the harm to the public interest.  
25 “[W]here governmental action is involved, courts should not intervene unless the need for equitable  
26 relief is clear, not remote or speculative.” (*City of Vernon v. Central Basis Municipal Water Dist.*  
27 (1999) 69 Cal.App.4th 508, 517.)

1 Petitioner cannot satisfy any of the standards that would entitle her to the extraordinary remedy  
2 she seeks.

3 **I. PETITIONER FAILS TO SHOW ANY THREAT OF IMMEDIATE AND**  
4 **IRREPARABLE INJURY**

5 Petitioner has not alleged, let alone established, that she would suffer any immediate and  
6 irreparable harm if the Court does not issue the requested TRO, as required by Section 527(c)(1) of the  
7 Civil Procedure Code. Petitioner does not allege any facts to show that she faces any immediate risk  
8 that her vehicle will be towed by SFPD. Petitioner notes that an SFPD officer gave her a ticket for  
9 having an expired registration, but SFPD is not currently towing vehicles for that reason unless there  
10 are exigent circumstances. (Cox Dec. ¶¶ 2-3, Ex. A.) While SFPD may tow vehicles under the  
11 community caretaking doctrine (such as where a vehicle is impeding traffic or jeopardizing public  
12 safety/convenience, blocking the efficient movement of traffic or creating a public safety hazard),  
13 Petitioner has not offered any facts to suggest that her vehicle is at risk of being towed for any of those  
14 reasons. Thus, Petitioner has not demonstrated that she faces any imminent risk that her vehicle will  
15 be towed by SFPD.

16 Petitioner appears to fear that her vehicle will be towed at the behest of “hostile” neighbors.  
17 To the extent a neighbor may have her car towed for blocking a driveway or for any other reason, the  
18 relief she seeks against the City will not prevent that. Petitioner seeks to restrain the conduct of the  
19 City, but has not sought any relief against any private person.

20 Accordingly, Petitioner has not demonstrated any immediate and irreparable harm that would  
21 warrant a TRO against the City.

22 **II. PETITIONER CANNOT ESTABLISH A REASONABLE PROBABILITY THAT SHE**  
23 **WILL PREVAIL ON THE MERITS.**

24 Petitioner’s TRO application should also be denied because she has not established that she  
25 will prevail on the merits. Petitioner has not provided any legal authority that would entitle her to an  
26 order restraining the City from towing her vehicle. As noted above, SFPD has decided not to tow  
27 vehicles at this time for having an expired registration. (Cox Dec. ¶¶ 2-3, Ex. A). Thus, to the extent  
28 that she seeks an order requiring SFPD to not tow her vehicle for having an expired registration, that

1 claim is moot. To the extent she seeks an order preventing the City from towing her vehicle for any  
2 reason, Petitioner is not entitled to that broad relief. It cannot be disputed that SFPD is entitled to tow  
3 any vehicle that is impeding traffic, threatening public safety or convenience, or otherwise creating a  
4 public safety hazard. Indeed, under *South Dakota v. Opperman* (1976) 428 U.S. 364, 369, “[t]he  
5 authority of police to seize and remove from the streets vehicles impeding traffic or threatening public  
6 safety and convenience is beyond challenge.” (*Id.*; see also *Hallstrom v. City of Garden City* (9th Cir.  
7 1993) 991 F.2d 1473, 1478). Petitioner is not entitled to relief that would constrain SFPD’s ability to  
8 comply with its duties under the community caretaking doctrine.

9 Further, Petitioner has not provided any legal authority supporting her claim that the City  
10 should be ordered not to tow her vehicle. She claims that she has a right to keep her vehicle on City  
11 property because she is homeless and does not wish to accept the shelter options the City has offered,  
12 but that is incorrect. So far as the City is aware, no court has ever held that a local government that is  
13 offering alternative shelter must allow a person or their vehicle to remain on public property  
14 indefinitely, and there is no legal basis for such an order. Indeed, in holding that “the Eighth  
15 Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on  
16 public property for homeless individuals who cannot obtain shelter,” the Ninth Circuit made clear that  
17 “we in no way dictate to the City that it must ... allow anyone who wishes to sit, lie, or sleep on the  
18 streets ... at any time and at any place.” (*Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584, 616; see  
19 also, e.g., *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 57-60 [anti-camping ordinance was  
20 not criminalization of homelessness].) Courts have repeatedly held that there is no right to occupy a  
21 particular piece of public property when there are other places available—to say nothing of when the  
22 City is affirmatively offering alternative shelter. (See, e.g., *Miralle v. City of Oakland* (N.D. Cal.,  
23 Nov. 28, 2018, No. 18-CV-06823-HSG) 2018 WL 6199929, at \*2 [“*Martin* does not establish a  
24 constitutional right to occupy public property indefinitely at Plaintiffs’ option”].)

25 Further, the relief Petitioner seeks would impermissibly interfere with the City’s policy  
26 judgments. The extent to which motorhomes may be allowed on City streets has been a matter of  
27 significant debate and policy discussion in the City. (See, e.g., RJN Ex. A & B.) On the one hand, the  
28 City recognizes that “oversized vehicles parked on city streets can present a variety of public safety

1 and public health problems, from impaired sight lines for road users to illegal dumping of garbage and  
2 waste matter on sidewalks and streets. Graffiti and tagging of oversized vehicles parked on city streets  
3 contributes blight to neighborhoods. And, with a finite supply of on- street parking, oversized vehicles  
4 (which take more curb space than smaller vehicles) can reduce availability of curb for other needs.”  
5 RJN Ex. A. On the other hand, the City seeks to balance those “real public health and safety concerns  
6 against providing compassion for vulnerable populations who must live in vehicles since they may  
7 otherwise live on the street or be forced to leave the City where they may be employed, have support  
8 services, or utilize other networks.” (*Ibid.*). The Court should decline Petitioner’s invitation to wade  
9 into that policy debate by preventing the City from addressing any harms caused by Petitioner’s  
10 oversized vehicle as they arise. (*People v. Kellogg* (2004) 119 Cal.App.4th 593, 605 [“we are not in a  
11 position to serve as policy maker to evaluate societal deficiencies and amelioration strategies”]; *Tobe*  
12 *v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1092 fn. 12 [“arguments ... regarding the apparently  
13 intractable problem of homelessness and the impact of the Santa Ana ordinance on various groups of  
14 homeless persons (e.g., teenagers, families with children, and the mentally ill) should be addressed to  
15 the Legislature and the Orange County Board of Supervisors, not the judiciary.”].)

16 Finally, if SFPD tows her vehicle, Petitioner asks that the Court issue a “preemptive” order that  
17 would require the City to waive fees and return her vehicle. (TRO App. at p. 2.) Petitioner is not  
18 entitled to that relief. The City offers programs for low-income administrative tow fee waivers that  
19 Petitioner can apply for *if her vehicle is towed*. (See, e.g., <https://www.sfmta.com/getting-around/drive-park/towed-vehicles/reduced-fees-first-time-tow-and-low-income-individuals>). There is  
20 no reason for the Court to issue an advisory opinion about whether Petitioner would be entitled to a fee  
21 waiver for a vehicle that, to the best of the City’s knowledge, has not been towed. Petitioner’s claim  
22 that she may be entitled to a fee waiver if her vehicle is towed is not yet ripe, and should not be  
23 considered by the Court. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal. App. 4th  
24 1559, 1573 (“The ripeness element of the doctrine of justiciability is intended to prevent courts from  
25 issuing purely advisory opinions.”); *People ex rel. Lynch v. Super. Ct.*, 1 Cal. 3d 910, 912 (1970)  
26 (“The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this  
27 court.”)  
28

