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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

17 MARY’S KITCHEN, RICHARD
18 HANCOX, LISA POLLARD,
19 HORACIO AGUILAR, TODD
20 CHRISTOPHER, DON TERRY,
21 STARLA ACOSTA
22 Plaintiffs,

Case No.: 8:21-CV-01483 DOC JDE

**PLAINTIFFS’ RESPONSE TO
ADDITIONAL QUESTIONS PER
ORDER OF THE COURT**

Date: Sept. 30, 2021
Time: 9:00 am
Ctrm: 9C (Hon. David O. Carter)

vs.

23 CITY OF ORANGE,
24
25 Defendant

1 Plaintiffs hereby submit their responses to the Court's Order, directing
2 supplemental briefing on the questions presented by the Court.

3
4 1. COPIES OF ANY COMMUNICATIONS BETWEEN THE CITY AND
5 MARY'S KITCHEN FOLLOWING THE 2019 RENEWAL REGARDING
6 CONCERNS OVER PUBLIC SAFETY AND/OR POTENTIAL
7 TERMINATION.

8 The evidence submitted by the City of incidents at or near Mary's Kitchen
9 all dates back to 2016, 2017 and 2019. Def. Ex. 4 ISO Dec. of Hagan (Dkt. 20-4)
10 Dec. of Chief Adams at ¶7 (Dkt. 20-11). As the Court is aware, in the time period
11 prior to the filing of *Orange County Catholic Worker, et al. v. County of Orange,*
12 *et al.*, Case No. 8:18-cv-01555 DOC-JDE, the Sheriff and several cities abutting
13 the Santa Ana River deliberately coordinated increased law enforcement in the area
14 to force unhoused persons in their respective jurisdictions to leave their cities and
15 move to the riverbed under threat of criminal prosecution.

16 Over the years, there were some conversations between the City and Mary's
17 Kitchen, requesting Mary's Kitchen to "monitor" the public space outside its gates.
18 Dec. of Wolf at ¶2. There were no other communications between the City and
19 Mary's Kitchen over any "public safety" concerns until the termination notice
20 issued in late June 2020. Pl. Ex. 5.

21 In March 2019, before the last lease renewal, Mary's Kitchen submitted a
22 formal request to renew the contract. In that document, Plaintiff noted that there
23 were guests gathering outside the property but that requests for them to move,
24 pursuant to City demands, was responded to by the assertion of the right to be on
25 property open to the public. Ex. 25 at 11. Moreover, in that same pre-renewal
26 document, Plaintiff noted it would take five to six months to relocate after a
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1 suitable property were found. *Id.* at 13. With this information, the City renewed
2 the lease. The City staff report recommending renewal emphasized how well run
3 the Kitchen was. Pl. Ex. 8, Ver. Comp. ¶9.

4 A year later, without any further exchange, Plaintiff received a notice from
5 the City stating that “[t]he city believes having a non-volunteer, dedicated security
6 guard will reduce the amount of calls for service . . .” Ex. 5 [[Dkt. 7-2, p.78](#)]. At
7 the time, Mary’s Kitchen was **not** fully open because of the pandemic stay-at-home
8 orders in California. This was also prior to vaccines, so the availability of outside
9 volunteers was limited. During this period, without access to the interior of Mary’s
10 Kitchen other than for emergencies, mail pick-up and bathrooms, guests were
11 forced to search for safe places to wait during the day. Def. Ex. 8 ISO Dec of
12 Hagan. But for the pandemic CDC requirements, Mary’s Kitchen’s guests would
13 have been inside the facility.

14 Sometime after the June 2020 notice issued, Mary’s Kitchen reopened for
15 full day-shelter services. Dec of Sues at ¶16. At the same time, Mary’s Kitchen
16 complied with the June 2020 request and hired a professional security company to
17 be on-site.

18 After hiring the security guard, Mary’s Kitchen received no subsequent
19 notice from the City that there continued to be concerns. While there were some
20 informal communications with officers who visited Mary’s Kitchen for warrant
21 checks, this was no different than past years before the 2019 renewal. Moreover,
22 as noted below, Mary’s Kitchen agreed to allow officers to come into the facilities
23 to do warrant checks on guests.

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1 At some point, the City did suggest Mary's should seek out partnerships to
2 have other organizations take over operations without detailing any specific
3 changes that were requested or would be made by an alternative operator. Shortly
4 thereafter, Holiday Zimmerman approached Mary's Kitchen for a meeting at the
5 direction of the City. Her organization, The HUB O.C.¹ described itself as serving
6 children locally and globally. While Mary's Kitchen met with her at the City's
7 behest, since the majority of Plaintiff's guests are unaccompanied adults -
8 including many seniors – Ms. Zimmerman's organization did not have the
9 background or experience to meet the needs of Mary's Kitchen's guests. Dec of
10 Wolf at ¶6. The City did not offer any other suggestions of “partners.”

11 In or about April 2021, Mary's Kitchen visited the two navigation centers
12 opened in North County: Placentia and Buena Park. Following those visits, Mary's
13 Kitchen sought to become a full navigation center so it could better service its
14 guests and qualify for outreach support and other services from the County and
15 assist unhoused persons in Orange to be placed in housing. The City did not
16 respond in any way to the request to discuss Mary's Kitchen's proposal to become
17 a full navigation center. Instead, shortly thereafter, and without further discussion,
18 the City issued the termination notice in June 2021.

19 The City communications submitted in response to the OSC re a Preliminary
20 Injunction demonstrate that (1) any concerns today are no different than pasat
21 concerns, if any, expressed to Mary's Kitchen before the 2019 renewal and (2) the

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24 ¹ <https://thehuboc.org/our-programs>

1 only communication prior to the 2021 termination notice and since the 2019
2 renewal were issued during the pandemic, when Plaintiff had significantly reduced
3 services to comply with California and CDC guidelines.²

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5 2. THE NUMBER OF ARRESTS MADE NEAR MARY'S KITCHEN
6 BEFORE THE 2019 RENEWAL, CLASSIFIED BY NUISANCE
7 OFFENSES, PROPERTY CRIMES, VIOLENT OFFENSES, AND
8 OUTSTANDING WARRANTS.

9 From April 2017 to June 2017, Orange Security stopped over 700 unhoused
10 people in parks in the City, making them relocate out of the public space. Ex.
11 24XX at 8 (City Powerpoint). This was prior to the *OCCW* litigation, when the
12 City had a practice of stopping almost all unhoused people and directing them to
13 the Santa Ana Riverbed. There is no data to show how many of these stops were in
14 the area in or around Mary's kitchen. There is also no suggestion in [Exhibit 24](#) that
15 any of these people were engaged in illegal activity at the time of the stops, since
16 they were were only directed to leave the parks and go to the riverbed. At that
17 time, the City relied upon Mary's Kitchen as the only resource for meals, hygiene
18 services, medical checkups, dental services, haircuts, veterinary services, cell
19 phone charging, clothes, laundry services, and respite. Ex. 24 XX at 13.

20 According to [Exhibit 24](#), from January 2017 to August 2017 there were over
21 2,400 "transient-related" calls for service. Ex. 24XX at 14. Again, most of this
22 enforcement occurred in public parks. The data Plaintiffs obtained from the City
23 does not include a breakdown of calls related to Mary's Kitchen specifically, but

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26 ²[Exhibit 23](#) is a compilation by Natalie Wolf of communications between the
27 City and Mary's Kitchen over recent years. Dec of Wolf at 2.

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1 just “transient-related” calls in general. Plaintiffs are unaware of any other data
2 that shows such information.

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4 3. THE NUMBER OF ARRESTS MADE NEAR MARY’S KITCHEN
5 AFTER THE 2019 RENEWAL, CLASSIFIED BY NUISANCE
6 OFFENSES, PROPERTY CRIMES, VIOLENT OFFENSES, AND
7 OUTSTANDING WARRANTS.

8 Plaintiffs have some data from 2021 created by the City. Based on an email
9 from the Orange Police department, there were 143 calls for service the City
10 attributed to Mary’s Kitchen in 2020. See Ver. Comp. ¶22. There is no indication
11 of who initiated these complaints. Many appear to be the result of systematic
12 detentions of individuals who appeared to be unhoused in the vicinity of, and who
13 sought assistance from, Mary’s Kitchen. The City’s data does not identify a crime
14 being committed at the time of the detention. Also, there is no indication of
15 whether these stops were a response to a call from a third party, or initiated by
16 officers who observed an unhoused person in the area.

17 The same email details that, for the first seven months of 2021, there were a
18 total of 80 arrests the City attributed to the area around Mary’s Kitchen. Of those
19 80 arrests, almost half (36) were for outstanding warrants, one was for possession
20 of a shopping cart, three were for drinking in public, fifteen were substance use
21 related, one was a failure to register under penal code 290, 12 for lodging or
22 trespassing, and 12 for unspecified municipal code violations. Ver. Comp. at ¶22.

23 Even when the City attempts to list what it views as the most significant
24 arrests from 2016 - 2021, it only further proves there is no significant change and
25 no legitimate public safety concern. Def. Ex. 2 [[Docket 20-12](#)]. The 2020 uptick
26 parallels the time period when Plaintiff’s services were limited.
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1 Notably, unlike other cities, Orange has insisted on the police being the only
2 point of interaction with unhoused single adults in the City. If the City is
3 concerned about the impact on resources of the volume of calls related to mental
4 health conditions as described in Chief Adams declaration, there are examples
5 throughout Orange County of how some cities have taken a healthcare first
6 approach to reduce police calls and better address the needs of the community
7 without endangering lives or disbursing people. For example, Huntington Beach
8 retained BeWell to provide a mobile unit that takes dispatch calls and is better
9 equipt to address the needs of those with severe mental health conditions.³
10 Anaheim partnered with CityNet to create the Community Care Response Team
11 that similarly responds to dispatch calls with medical providers instead of law
12 enforcement.⁴ And Fullerton created Project Hope in partnership with Buena Park⁵.
13 All these cities who have shelters that also work to move people into housing.
14 This approach significantly reduces the demand on law enforcement.

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³<https://www.huntingtonbeachca.gov/residents/bewellhb/>

⁴<https://www.anaheim.net/5808/Community-Care-Response-Team>

⁵<https://voiceofoc.org/2021/06/even-more-oc-cities-join-movement-to-switch-out-cops-for-social-workers-in-homeless-mental-health-response/>

1 One of the other purported resources in Orange listed by the City is the
 2 HomeAid⁶ family shelter. This shelter only serves adults with at least one minor
 3 child. Until the pandemic, it did not permit daytime services and was only open
 4 from 5 p.m. to 9 a.m. Guests of HomeAid often walked to Mary's Kitchen to use
 5 its services during the day and wait for HomeAid to reopen in the evening. The
 6 other shelters listed by the City are all in other cities and at capacity, or have
 7 similar restrictions, such as pregnant women only. Finally, the City notes
 8 involvement with the Continuum of Care. According to the 2021 CoC membership
 9 roster, the City of Orange and its HEART⁷ have not even joined the CoC while
 10 some cities like Santa Ana and Anaheim serve on the board of the CoC.⁸

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 12 4. COPIES OF ANY COMMUNICATIONS BETWEEN NORTH SPA
 13 SHELTERS AND CITIES AND MARY'S KITCHEN REGARDING
 14 TRANSPORTING UNHOUSED INDIVIDUALS TO RECEIVE
 15 SERVICES AT MARY'S KITCHEN.

16 Mary's Kitchen is not permitted to act as a referral agency by Orange or the
 17 other North SPA cities. As a result, they are unable to work directly with any North
 18 SPA shelters to connect people to services. However, despite the lack of formal
 19 arrangement, until the termination notice, shuttles came to Mary's Kitchen multiple

20 ⁶This shelter hosts 10- 15 families with a maximum stay of 45 days. They
 21 are permitted to occupy the property from 5PM to 9AM.
 22 <https://www.volunteernetworkoc.org/homeaid-orange-county-new-orange-shelter/>

23 ⁷<https://www.ochealthinfo.com/sites/hca/files/2021-09/2021%20Agency%20CoC%20General%20Membership%20-%20public%20doc.pdf>

24 ⁸<https://www.ochealthinfo.com/sites/hca/files/import/data/files/118872.pdf>

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1 times per day from shelters in Buena Park and Placentia, Bridges and Salvation
2 Army. See Ex. 7-4 (Letter from Salvation Army). Shelter guests often were
3 transported to visit Mary's Kitchen on Thursdays to get new clothes. Residents of
4 these shelters often maintain mail and other services at Mary's Kitchen out of fear
5 that if they transfer to their primary shelter address and then are exited, they will
6 lose access to paychecks and benefits. Decl of Wolf at ¶7.

7 Mary's Kitchen estimates that about 20% of its guests are currently enrolled
8 in and residing at a shelter program in another city in North SPA and 10% are in
9 some form of housing. Although the shuttles from other shelters stopped coming
10 to Mary's after the termination notice issued, many of the individuals still come on
11 their own because there is no alternative for the services offered by Mary's
12 Kitchen. Decl of Wolf at ¶9.

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14 5. A COUNT OF MARY'S KITCHEN'S CLIENTS BY CITY WHERE THEY
15 CURRENTLY RESIDE.

16 Before the global pandemic, Mary's Kitchen did not require a formal sign in
17 or out procedure and did not track this data. Over the past few months, Mary's
18 Kitchen has required guests to sign in when they arrive. Additionally, Mary's
19 Kitchen stamps mail as it arrives and regularly checks mail to return anything that
20 is not picked up within a few weeks. In September 2021, Mary's Kitchen received
21 mail for about 500 unduplicated people. Dec of Wolf at ¶8. The staff are informed
22 and believe most of those who receive mail at the Kitchen are residents of Orange.

23 Mary's Kitchen also reviewed the sign-in data for August and September.
24 When someone arrives, they must check in with security. If they are not on the
25 approved guest list, their name is added to the bottom of the list. A new list is
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1 created weekly for security. Based on guests who visited in August and September,
2 that list has over 503 names listed. Dec of Wolf at ¶8. Mary's Kitchen does not
3 currently ask guests what where they sleep when they check in. Many guests are in
4 cars and often move around to avoid police who cite them for parking to sleep. Dec
5 of Wolf at ¶10.

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7 **6. THE NUMBER OF MARY'S KITCHENS' CLIENT WHO ARE SEEKING**
8 **SHELTER, AND THE NUMBER WHO REFUSE SHELTER.**

9 Mary's Kitchen is not an approved referral source for shelters. Because the
10 only referral would require the Kitchen to go through the Orange Police, Mary's
11 Kitchen does not actively ask people about shelters that they cannot actually offer,
12 or that will require contact with police. Mary's Kitchen's leadership believes that
13 most of its guests are on some waitlist, either for housing or for shelter, but cannot
14 confirm since they cannot access the County or City database. Dec. of Wolf at ¶11.

15 Some of the guests of Mary's Kitchen, including the more vulnerable
16 populations, would not be appropriate for congregate shelter placements because of
17 their trauma, including domestic violence and post-traumatic stress disorder from
18 military service. Mary's Kitchen often asks County healthcare workers to meet
19 with people who need higher levels of health care but the County workers usually
20 reply that they cannot initiate the conversation. The City has not brought in County
21 assessment teams for mental health programs except for once when this litigation
22 began. Without that outreach resource, there are no placements in non-congregate
23 shelters. On some occasions, at the request of the Orange Police Department,
24 Mary's Kitchen pays to place its guests who have been approved for shelter in
25 motels pending shelter space availability. Decl of Wolf at ¶12.

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7. THE NUMBER OF MARY'S KITCHEN CLIENTS WHO ARE PRESENTLY SHELTERED, AND THE LOCATION OF SUCH SHELTER.

Mary's Kitchen estimates that about 10% of its guests are in some form of housing but require food and groceries because they have limited funds and are in shared rooms with no cooking facilities. About 20% of its guests stay in shelters but keep their mail and clothes and medical services at Mary's Kitchen for safety. The remaining 70% are unsheltered. These estimates are based on personal interactions with Plaintiff's guests over the years and not on any data collected by the Kitchen. Because Orange does not have shelters for adults without children, only families can be sheltered in Orange.

8. THE NUMBER OF UNHOUSED PEOPLE IN THE CITY OF ORANGE, HOW MANY ARE PROVIDED WITH SHELTER AND THE LOCATION OF SUCH SHELTER.

The 2019 Point in Time Count listed 341 people homeless in the City of Orange. No count was done in 2020 or 2021; however, it is estimated that, with typical growth in the number of unhoused people and the impact of the pandemic, it is likely the number has increased by at least 20%.

The City agreed in the OCCW settlement that it would not do enforcement because it would have very limited access to beds in Buena Park, Placentia, and Bridges. Plaintiffs believe that there are few, if any, Orange residents in some of those shelters after the Court allowed Placentia to apply a residency preference for its City and then made an arrangement with Stanton, which has no shelter, to

1 reserve a significant number of beds. This reduced the beds available to other Noth
2 SPA cities.

3 The County provides beds in the City for families with children at HomeAid.
4 Plaintiffs do not know how many residents of HomeAid are from Orange and how
5 many are from other cities in the County. Similarly, the County provides
6 residential treatment beds to medically qualified individuals at BeWell but
7 Plaintiffs do not know how many of those beds are for residents of Orange.

8 Mary's Kitchen is currently located in an area zoned P1. *See* City map by
9 zone. <https://www.cityoforange.org/DocumentCenter/View/626>. In Appendix C-
10 19 of the approved 5th cycle housing element the City submitted to the State of
11 California HCD, the City stated it was revising the zoning for emergency shelters
12 and other facilities for unhoused persons:

13
14 Policy Action 30- Adequate Sites for Emergency
15 Shelters/ Transitional Housing In compliance with SB 2, effective
16 January 1, 2008, the City must analyze and revise the existing Zoning
17 Ordinance to allow for emergency shelters, transitional housing and
18 supportive housing to homeless individuals and families for annual
19 and seasonally estimated need. The City will comply with the
20 requirements of the State in the following manner: · The City is
21 considering amending the PI, M1 and M2 zones, or other suitable
22 zone with sufficient capacity, to permit emergency shelters without
23 discretionary approvals. The City will also consider allowing
24 emergency shelters without discretionary approvals in the future
25 Urban Mixed Use zone(s). The subject zoning category(ies) shall
26 include sites with sufficient capacity to meet the local need for
27 emergency shelters.

28 Plaintiffs believe that the City recently amended zone M1 and M2 to allow
29 for "by right" shelter. This impacts almost all the areas surrounding Mary's
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1 Kitchen. The property where Mary's Kitchen is locate is an island in that M1 and
2 M2 zoning that continued to be a P-I property.

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4 PI is defined as "17.24.010 - Purpose and Intent.

5 The Public Institution (PI) district is established to
6 accommodate a wide range of public and quasi-public uses which, by
7 their very nature, need special consideration to ensure compatibility
8 with surrounding development. The PI district may also accommodate
9 housing and privately operated office and medical office activity that
10 is functionally related to a public and quasi-public use. This district is
11 further intended to be applied only to property clearly intended for
12 such public and quasi-public uses.

13 9. A LIST OF LOCATIONS IN THE CITY OF ORANGE BESIDES
14 MARY'S KITCHEN WHERE UNHOUSED PEOPLE CAN RECEIVE
15 FOOD, MEDICAL CARE, HYGIENE RESOURCES, AND/OR MAIL,
16 AND THE FREQUENCY WITH WHICH THOSE LOCATIONS OFFER
17 SERVICES, THE NUMBER OF PEOPLE SERVED DAILY AND THOSE
18 LOCATIONS CAPACITY TO SERVICE ADDITIONAL INDIVIDUALS.

19 There are none. Plaintiffs submitted the "Pocket Guide" of North SPA
20 resources at Ex. 22 ([Docket 17](#)). This includes some food banks which distribute
21 raw goods intended for those who can cook at home. Plaintiffs also submitted a
22 more detailed analysis of each location, the days and times services are provided,
23 and the distance from Mary's Kitchen to each, including estimated travel time
24 based on Google Maps algorithms. Decl. of Weitzman and Ex. 13-14. ([Docket 17](#)).

25 10. A LIST OF SHELTERS, IN OR OUTSIDE OF THE CITY OF ORANGE,
26 THAT USE MARY'S KITCHEN FOR THE PROVISION OF SERVICES
27 (E.G. FOOD DISTRIBUTION).

28 Each day, Mary's Kitchen picks up food from approximately twelve
29 locations including grocery stores and fast food restaurants. Dec of Wolf at ¶14.

1 Some of the food donations, including individual prepared meals and produce, are
2 distributed by Mary's Kitchen to small local organizations serving low-income
3 people. Organizations that rely upon Mary's Kitchen to feed their participants
4 include: Church of the Southland; St. Norbert's Church; Blessed Sacrament; St.
5 Michael's Abbey; Lovers of the Holy Cross; TIKKUN World Wide Charity; Love
6 in Motion; Triangle Terrace Subsidized Housing for Seniors; Temple Beth
7 Shalom; Northwest of the Well; Grandpa's House; and Grandma's House. Before
8 the pandemic the local community colleges also relied upon Mary's Kitchen for
9 this resource. Many of the students who attend are food insecure. However, many
10 of the local colleges have limited in-person classes due to the pandemic and, so,
11 most of have not yet restarted their food access programs. Dec of Wolf at ¶14.

12 In addition, some providers rely upon Mary's Kitchen for food boxes,
13 clothes, or other support. About 40 boxes per month are distributed to families.
14 Many low-income individuals living in rooms without cooking facilities rely upon
15 these prepared foods. Social workers from agencies including St. Joseph's Hospital
16 refer people to Mary's Kitchen for resources when no shelter is available, or a
17 referral will take days but the person needs immediate walk-in help. Dec of Wolf
18 at ¶15. Even the Orange Police Department HEART team often brings people to
19 Mary's Kitchen to get clothes, hygiene, and other necessities.

20
21 11. WHETHER MARY'S KITCHEN PLANS TO SECURED OR HAS
22 SECURED A NEW LOCATION, AND IF IT HAS NOT SECURED A
NEW LOCATION, HOW LONG IT ANTICIPATES SUCH A SEARCH
TAKING.

23 Mary's Kitchen has wanted to own its property for years. It offered on
multiple occasions to purchase the City land it sits on and the neighboring

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1 property. Relying on its lease, Mary's Kitchen believed it had until 2024 or 2029
2 to plan for an alternate location. Since the termination notice issued, the leadership
3 and board have reached out to additional realtors with experience placing shelters
4 in SB2 zones including Kacey Taormina. Dec of Wolf at ¶16. Mary's Kitchen
5 provided them with specifications on the needed property within the Orange SB2
6 zone; and has scheduled meetings with two banks to discuss mortgage options.
7 Mary's Kitchen has substantial commitments to assist with a purchase and launch a
8 capital campaign to raise funds for the property. While the specific timeline will
9 depend upon first locating a potential property, it will be challenging to complete
10 the move much before the anticipated date in 2024 and will require the full support
11 of the City for opening operations and approving permits at a new site. The
12 building needs to accommodate the industrial equipment essential to the services.
13 Plaintiff is aware of the data published by Fr. Kriz, showing a correlation in the
14 rise of deaths of unhoused persons in the City when the Kitchen was closed in the
15 earlier stages of the pandemic. With that risk to its guests in mind, Plaintiff's
16 transition to a new location needs to be done with the least interruption to the
17 community it serves.

18

19 12. IF MARY'S KITCHEN DOES NOT PLAN TO SECURE A NEW
20 LOCATION, WHETHER IT HAS PREPARED A PLAN TO
21 TRANSITION ITS SERVICES.

22 Mary's Kitchen does intend to secure a new location if the City lease is not
23 renewed, with adequate lead time to do so. Mary's Kitchen does not know of any
24 alternative providers to which it could transition its services. Decl. of Wolf.

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1 13. WHETHER MARY'S KITCHEN HAS PREPARED A PLAN TO CLOSE
2 AND REMOVE ITS FIXTURES.

3 As soon as a new location is selected, Mary's Kitchen will develop the plan
4 to relocate the industrial kitchen and other property. The Kitchen includes multiple
5 industrial-grade appliances that may impact necessary upgrades for wiring and
6 foundation support, for example. Until a new property is secured, no final plan can
7 be created. In addition, as noted above, any plan will depend in significant part on
8 the City and the timing of approval for various permits as the new building is
9 upgraded. Mary's Kitchen is prepared to work to do this as quickly as possible.

10 Dated: Sept. 29, 2021

Respectfully submitted

ELDER LAW & DISABILITY RIGHTS CTR.

11 /s/ Brooke Weitzman .

12 By: Brooke Weitzman