

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
ARTHUR J. FRIEDMAN, Cal. Bar No. 160867
3 ALEXANDER L. MERRITT, Cal. Bar No. 277864
Four Embarcadero Center, 17th Floor
4 San Francisco, California 94111-4109
Telephone: 415.434.9100
5 Facsimile: 415.434.3947
E mail: afriedman@sheppardmullin.com
6 amerritt@sheppardmullin.com

7 Attorneys for Defendants
CITY OF SAUSALITO, JILL JAMES
8 HOFFMAN, JOHN ROHRBACHER,
MARCIA RAINES, KENT BASSO
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 SAUSALITO/MARIN COUNTY CHAPTER
OF THE CALIFORNIA HOMELESS UNION,
14 on behalf of itself and those it represents;
ROBBIE POWELSON; SHERI I. RILEY;
15 ARTHUR BRUCE; MELANIE MUASOU;
SUNNY JEAN YOW; NAOMI
16 MONTEMAYOR; MARK JEFF; MIKE
17 NORTH; JACKIE CUTLER and MICHAEL
ARNOLD on behalf of themselves and
18 similarly situated homeless persons,

19 Plaintiffs,

20 v.

21 CITY OF SAUSALITO; MAYOR JILL
22 JAMES HOFFMAN; POLICE CHIEF JOHN
ROHRBACHER; CITY MANAGER
23 MARCIA RAINES; DEPT. OF PUBLIC
WORKS SUPERVISOR KENT BASSO,
24 individually and in their respective official
25 capacities,

26 Defendants.
27
28

CASE NO. 3:21-cv-01143-LB

**DECLARATION OF JOHN ROHRBACHER
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO *EX PARTE* APPLICATION
FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Date: T.B.D.
Time: T.B.D.
Courtroom: T.B.D.

Action Filed: February 16, 2021
Trial Date: T.B.D.
Judge: Magistrate Judge Laurel Beeler

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF JOHN ROHRBACHER

I, John Rohrbacher, declare as follows:

1. I am the Chief of Police for the City of Sausalito and have held that position since January 2016. If called as a witness, I could and would competently testify to all facts stated herein based upon my personal knowledge except where stated upon information and belief. This Declaration is submitted in support of Defendants’ Opposition to Plaintiffs’ Ex Parte Application for Temporary Restraining Order.

2. Prior to serving as Chief of Police for the City of Sausalito, I served as a Police Captain for the City of Sausalito from approximately 2009 to 2016 and as an investigator at the Marin County District Attorney’s Office from approximately 2006 to 2009. Before that, I spent approximately 27 years at the City of San Rafael Police Department, departing in 2006 after a 15-month term as Police Chief.

3. I have personal knowledge of the conditions of the encampment presently existing adjacent to Dunphy Park in Sausalito and the individuals residing there (“Encampment”), as I have personally made numerous visits and have received daily updates from officers reporting to me at my direction who have conducted daily walk-throughs of the location. I have further reviewed relevant City of Sausalito Police Department's records and statistical analyses, and I have debriefed with my Departmental staff on these incidents.

4. On or around December 28, 2020, approximately 1 individual set up camping gear and/or assembled makeshift shelter on public right of way property located on Humboldt Avenue just north northeast of 300 Locust Street, immediately east of Dunphy Park.

5. The population of the Encampment increased to approximately ten or eleven persons by February 8, 2021, on information and belief, the majority of whom claimed to be displaced from their boats where they resided, within Richardson’s Bay Regional Authority (“RBRA”) jurisdictional waters.

6. The population of the Encampment has subsequently increased to approximately twenty persons as of February 16, 2021, on information and belief.

1 7. The Encampment site extends immediately to private property adjacent to
2 Richardson’s Bay and within the jurisdiction of the San Francisco Bay Conservation and
3 Development Commission (“BCDC”).

4 8. The Encampment includes approximately 23 tents and makeshift shelter structures,
5 heavy furniture, food preparation area with barbeque grills, and other miscellaneous personal
6 property.

7 9. On information and belief, a Sausalito city employee visited the Encampment at
8 Dunphy Park on or prior to February 8, 2021. During this visit, they took photographs which
9 accurately depicted the conditions of the Encampment at Dunphy Park at that time. A true and
10 accurate copy of this photograph is attached to Defendants’ Index of Exhibits as Exhibit 9,
11 respectively.

12 10. The current Dunphy Park encampment site poses significant public health and
13 safety risks because there are no conveniently located permanent bathroom facilities or shower
14 facilities. Additionally, the site has expanded onto private property immediately adjacent to
15 Richardson’s Bay, within the territorial jurisdiction of San Francisco Bay Conservation and
16 Development Commission (“BCDC”).

17 11. While I am informed that on or about February 5, 2021, an unauthorized portable
18 toilet was deposited at the encampment, this portable toilet only increases health and safety
19 concerns as there are no protocols or procedures in place for City maintenance and cleaning of this
20 temporary facility.

21 12. During the early morning hours of February 4, 2021, one of the residents of the
22 Dunphy Park encampment, Robert Powelson, moved his tent and personal belongs from the
23 encampment site to the Bank of America Plaza located at the intersection of Bridgeway and
24 Anchor St. in Sausalito, CA 94965 (“Bank of America Plaza”). I directed my staff on Thursday
25 morning (February 4, 2021) at approximately 7:00 a.m. to remove Mr. Powelson’s belongings
26 from the Bank of America Plaza. Mr. Powelson subsequently returned to the Dunphy Park
27 encampment site.

28

1 13. I attended the Sausalito City Council’s remote Town Hall meeting on the evening
2 of February 4, 2021. During that meeting, Mr. Powelson testified that he had moved his tent and
3 belongings to the Bank of America Plaza in order to be located closer to accessible bathroom
4 facilities.

5 14. The Marinship Park location selected by the City Council in its February 5, 2021
6 Resolution for the encampment is far superior to the current Dunphy Park location. Marinship
7 Park offers permanent bathroom facilities in close proximity to the replacement encampment site,
8 and the proposed encampment site is not located immediately adjacent to Richardson’s Bay.

9 15. Additionally, the Downtown Streets Team, a non-profit organization serving the
10 Bay Area, currently provides a mobile showering program (consisting of two mobile
11 shower/restroom trailers) at Marinship Park every Tuesday and Friday from 8:00 a.m. to 10:40
12 a.m.

13 16. Marinship Park is the sole authorized and logistically feasible location in Sausalito
14 for Downtown Streets mobile showers program. It is not physically possible to back the trailer into
15 the parking lot at Dunphy Park. Moreover, there is no water hook up at Dunphy Park which
16 would allow all individuals desiring a shower to take one.

17 17. The mobile showering program also offers individuals utilizing the services of the
18 program an opportunity to meet with outreach support teams who can enter the individual into the
19 county's Homeless Management Information System (HMIS) and be assessed using the county's
20 vulnerability index service prioritization decision assistance tool (VI-SPDAT) – both of which
21 constitute means to find the individuals permanent housing. A true and correct copy of a October
22 27, 2020 Staff Report led and authored by the City of Sausalito Police Department is attached as
23 Exhibit 10 to Defendants’ Index of Exhibits submitted in conjunction herewith. The Staff Report
24 provides an analysis and overview of the mobile showering program at Marinship Park and
25 highlights various benefits of the program including (but not limited to) beneficiaries of the
26 program took 2,342 showers (from November 2018 through October 27, 2020); 1,271 showers
27 were provided in Sausalito during 2020 (through October 27, 2020) marking an approximate 30%
28 increase in usage; the Downtown Streets Team partnered with the San Francisco-Marin Food

1 Bank to provide an access point for food distribution when the COVID-19 Shelter in Place/Public
2 Health Order started and over 600 meals at the Sausalito Mobile Showers have been distributed
3 (through October 27, 2020).

4 18. On Tuesday, February 9, 2021, at approximately 5:30 p.m. PST, my department
5 posted Notices to Vacate in visible locations around the Dunphy Park encampment and orally
6 communicated the substance of such notices, to the extent possible, with individuals at the
7 encampment. The Notice to Vacate advises the public and members of the encampment that the
8 Public Works Department will clear and close the Dunphy Park encampment site at approximately
9 9 a.m. on Tuesday, February 16, 2021, conditioned on the availability of storage at Marinship
10 Park. A true and correct of the Notice to Vacate is attached as Exhibit 11 to Defendants' Index of
11 Exhibits submitted in conjunction herewith.

12 19. On Tuesday, February 16, 2021, at approximately 2:00 p.m. PST, my department –
13 in cooperation with the Public Works Department and other City officials attempted to clear and
14 close the encampment at Dunphy Park pursuant to the Notice to Vacate and the Standard
15 Operating Procedures attached to Resolution No. 6009, adopted by the City on February 5, 2021.
16 Members of the Police Department and Public Works spoke with members of the Encampment
17 and the public for approximately two hours. After doing so, it was determined that clearing and
18 closing the Encampment would not be feasible that day.

19

20

21

22

23

24

25

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16 day of February, 2021 in Sausalito, California.

DocuSigned by:
John Rohrbacher
F3AC5BA45DC140E...

John Rohrbacher