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9

10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
11

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

17 Plaintiff,

18 v.

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

23 Defendants.
24

Case No. 3:21-cv-01143-LB

**DEFENDANTS' OBJECTIONS TO
EVIDENCE SUBMITTED BY PLAINTIFFS
IN SUPPORT OF *EX PARTE*
APPLICATION FOR EMERGENCY
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

25 Defendants respectfully submit the following objections to evidence in regards to the
26 Declaration of Robbie Powelson ("Powelson Decl."), the Declaration of Sherie Lynn McGregor
27 ("McGregor Decl."), the Declaration of Michael Arnold ("Arnold Decl."), and the Declaration of
28

1 Arthur Bruce (“Bruce Decl.”). All Declarations were submitted in support of Plaintiffs’
2 Emergency Ex Parte Application for Injunctive Relief.

3
4 **OBJECTIONS TO POWELSON DECL.**

5 **Objection No. 1**

6 **Powelson Decl. ¶ 2:** “Members of our camp at 300 Locust Street (Dunphy Park) Sausalito
7 are under threat of imminent harm by the City of Sausalito. The City of Sausalito voted 4-1 on
8 February 5th to evict us. According to their website, they will post 72 hour eviction notices on our
9 camp on Tuesday February 9th. ‘The motion approved by the Council also directs City staff to
10 withhold posting the notice of the closure of Dunphy Park to overnight camping until Tuesday,
11 February 9, and delays implementing the decampment of Dunphy Park until reasonable storage
12 facilities can be made available to those overnight campers utilizing Marinship Park.’ This
13 imminent action puts campers at risk of COVID exposure. Many campers are senior with
14 disabilities.”

15 **Grounds for Objection:** Defendants object to this statement on the basis that it lacks
16 foundation (Fed. R. Evid. § 602); provides inadmissible speculation and conclusions (Fed. R.
17 Evid. § 602); is not based on declarant’s personal knowledge (Fed. R. Evid. §602); and provides
18 improper expert testimony by the declarant (Fed. R. Evid. § 701, 702).

19 Mr. Powelson does not state any qualifications or expertise to establish that members of
20 the park are at “imminent harm” because of the City of Sausalito. He puts forward no
21 qualifications or expertise to support the conclusion that the actions of the City “put campers at
22 risk of COVID exposure.” He also does not establish that he has the expertise or personal
23 knowledge to state that “[m]any campers are seniors with disabilities.”

24 *Court's Ruling on Objection No. 1*

25 Sustained: _____

26 Overruled: _____

1 **Objection No. 2**

2 **Powelson Decl. ¶ 3:** "Since the beginning of the camp, the city has not offered campers
3 protective gear. City Council refused to bring bathrooms and handwashing stations for the camp,
4 so that our camp had to pay for it ourselves. They did not provide masks for people sheltering in
5 place, which we have had to pay for. They also did not provide educational information to
6 campers about the dangers of COVID to increase mask compliance, which we have. The city has
7 offered no COVID testing to me or my campmates to my knowledge. Our camp has taken serious
8 precautions for COVID while the city has done nothing to protect people with serious disabilities
9 from it. Now they further jeopardize us by forcing us to move into a camp that only hides us from
10 view."

11 **Grounds for Objection:** Defendants object to this statement on the basis that it is
12 irrelevant (Fed. R. Evid. § 401, 402).

13 The City’s alleged failure to offer campers protective gear, masks, bathrooms, educational
14 information, and COVID testing is irrelevant and provides no probative value regarding the
15 eviction of campers.

16 *Court's Ruling on Objection No. 2*

17 Sustained: _____

18 Overruled: _____

19 **Objection No. 3**

20 **Powelson Decl., ¶ 4:** “Speaking personally, my health will be put in jeopardy with the
21 move. I will have to help my campmates with physical disabilities in moving their possessions. I
22 will have to handle their possessions and tents and load them into my truck for transport. I will
23 likely be compelled to give them a lift as well where they will have to ride in the cab of the truck
24 with me.”

25 **Grounds for Objection:** Defendants object to this statement on the basis that it lacks
26 foundation (Fed. R. Evid. § 602); is not based on declarant’s personal knowledge (Fed. R. Evid. §
27 602); and it provides inadmissible speculation and conclusions (Fed. R. Evid. § 602).
28

1 Mr. Powelson offers no basis to establish why he believes he will have to help his
2 campmates with physical disabilities move their possessions or provide them with transportation.
3 These statements are purely speculative as to what may happen, and are not based on Mr.
4 Powelson's personal knowledge.

5 *Court's Ruling on Objection No. 3*

6 Sustained: _____

7 Overruled: _____

8 **Objection No. 4**

9 **Powelson Decl., ¶ 5:** "The resolution that the council passed states that we will have to
10 break down tents every day at the campsite they want to send us to. For people with disabilities,
11 this means I will have to help them break down or others. This will put people with disabilities in
12 close proximity to spread, as well as those who care give for them. Their current resolution would
13 also force us to break down our kitchen every day. This would force us to increase the amount of
14 time we have to touch shared culinary tools necessary to feed ourselves, and proportionally
15 increase the chance of COVID exposure."

16 **Grounds for Objection:** Defendants object to this statement on the basis that it lacks
17 foundation (Fed. R. Evid. § 602); provides inadmissible speculation and conclusions (Fed. R.
18 Evid. § 602); is not based on declarant's personal knowledge (Fed. R. Evid. §602); and provides
19 improper expert testimony by the declarant (Fed. R. Evid. § 701, 702).

20 Mr. Powelson does not establish why he believes he will be forced to help his campmates
21 with physical disabilities break down their camping gear. He does not state any qualifications or
22 expertise to establish that breaking down the kitchen every day will lead to increased COVID
23 exposure.

24 *Court's Ruling on Objection No. 4*

25 Sustained: _____

26 Overruled: _____

1 **Objection No. 5**

2 **Powelson Decl., ¶ 6:** “The current location is also critical for the procurement of life
3 sustaining protective gear, food, and other supplies. We currently have active community support
4 in the form of donations that would be disrupted if our camp was moved. Not only that, the camp
5 is currently a locus for service providers to meet with us. If we are moved, many people will
6 choose to hide in the hills rather than go into a mismanaged city camp. This will disrupt their
7 access to health services they currently receive voluntarily. The City of Sausalito has thus far
8 given no aid to the camp - their current proposal continues this trend of behavior. They are going
9 to put the lives of the public at risk.”

10 **Grounds for Objection:** Defendants object to this statement on the basis that it lacks
11 foundation (Fed. R. Evid. § 602); provides inadmissible speculation and conclusions (Fed. R.
12 Evid. § 602); is not based on declarant’s personal knowledge (Fed. R. Evid. §602); and provides
13 improper expert testimony by the declarant (Fed. R. Evid. § 701, 702).

14 Mr. Powelson does not establish why he believes he people “will choose to hide in the hills
15 rather than go to a mismanaged city camp” or that the “City of Sausalito has thus far given no aid
16 to the camp.” He does not state any qualifications or expertise to establish that the City of
17 Sausalito is “going to put the lives of the public at risk.”

18 *Court's Ruling on Objection No. 5*

19 Sustained: _____

20 Overruled: _____

21 **Objection No. 6**

22 **Powelson Decl., ¶ 7:** "The current encampment in two neglected parcels, one publicly
23 owned and other privately, that are well spaced away. The trail that runs through the area that is
24 used by dog walkers is not impeded by any obstructions. There have been zero arrests of campers
25 for unlawful behavior.”

26 **Grounds for Objection:** Defendants object to this statement on the basis that it lacks
27 foundation (Fed. R. Evid. § 602); provides inadmissible speculation and conclusions (Fed. R.
28

1 Evid. § 602); is not based on declarant’s personal knowledge (Fed. R. Evid. §602); and provides
2 improper expert testimony by the declarant (Fed. R. Evid. § 701, 702).

3 Mr. Powelson does not state any qualifications or expertise that allows him to claim that
4 there “have been zero arrests of campers for unlawful behavior.” This statement is pure
5 speculation and not based on any expertise.

6 *Court's Ruling on Objection No. 6*

7 Sustained: _____

8 Overruled: _____

9 **Objection No. 7**

10 **Powelson Decl. ¶ 8:** “The issue of mask compliance is also one that city has offered no
11 remedy, education, resources, or otherwise. They have not demonstrated how moving anyone will
12 improving compliance with reducing COVID spread. They are going to simply be dispersing
13 people into the community and adding to their hardship.”

14 **Grounds for Objection:** Defendants object to this statement on the basis that it lacks
15 foundation (Fed. R. Evid. § 602); provides inadmissible speculation and conclusions (Fed. R.
16 Evid. § 602); is not based on declarant’s personal knowledge (Fed. R. Evid. §602); and provides
17 improper expert testimony by the declarant (Fed. R. Evid. § 701, 702).

18 Mr. Powelson does not state any qualifications or expertise to remark on mask compliance
19 or the increased risk of the spread of COVID-19.

20 *Court's Ruling on Objection No. 7*

21 Sustained: _____

22 Overruled: _____

23 **Objection No. 8**

24 **Powelson Decl. ¶ 9:** "A critical part of the Public Health Officer's guidance, which is
25 posted on the city's own website states ‘Get plenty of rest, drink plenty of fluids, eat healthy foods,
26 and manage your stress to keep your immunity strong.’ - however Sausalito will directly reduce
27 peoples ability to get rest by having access to stable tents, access to water through a stable
28 campground water supply, access to healthy food which our kitchen currently provides, nor

1 remedy for the stress that the impending eviction led by armed police is causing on people's
2 immune systems. They will have to use public water fountains or go into stores to purchase water,
3 all of which carries added risk of COVID 19 exposure. This will overall reduce their access to
4 water. They will also not have access to food and the means to cook it - this will mean an over
5 reliance on processed foods and not cooked meals currently provided by the camp. This will
6 reduce their access to nutritious food.”

7 **Grounds for Objection:** Defendants object to this statement on the basis that it lacks
8 foundation (Fed. R. Evid. § 602); provides inadmissible speculation and conclusions (Fed. R.
9 Evid. § 602); is not based on declarant’s personal knowledge (Fed. R. Evid. §602); and provides
10 improper expert testimony by the declarant (Fed. R. Evid. § 701, 702).

11 Mr. Powelson does not state any qualifications or expertise to comment on the risk of the
12 spread of COVID-19. He also provides no basis for his claim about access to resources or his
13 conclusion that the City of Saualito’s actions will reduce access to nutritious food.

14 *Court's Ruling on Objection No. 8*

15 Sustained: _____

16 Overruled: _____

17 **Objection No. 9**

18 **Powelson Decl., ¶ 10:** "Marinship Park is right next to the Army Corps of Engineers,
19 where peoples boat homes are being crushed by the policies of the Richardson Bay Regional
20 Agency and Bay Conservation and Development Agency. When fiberglass boats are crushed, it
21 could irreparably expose people to fiberglass particulates and lead based paint dust that will lodge
22 themselves in their lungs . I have personally observed thick clouds of dust fanning and drifting all
23 over Marinship Park. Note in the accompanying exhibit that the worker about to crush a boat is
24 fully encased in the cab of his equipment, yet he is still wearing a mask, thus obviously not to
25 protect against COVID-19, but to protect, even in his glass-enclosed cab, against the thick cloud
26 of dust that will be formed when he begins actually crushing the boat. I have attached hereto
27 official Government Health Documents pertaining to the hazards of fiberglass dust and lead-based
28 paint dust.”

1 threats to public health and safety that can be attributed to the campers in Dunphy Park or, to the
2 extent they exist are attributable to the City's own failures as described above.”

3 **Grounds for Objection:** Defendants object to this statement on the basis that it lacks
4 foundation (Fed. R. Evid. § 602); provides inadmissible speculation and conclusions (Fed. R.
5 Evid. § 602); is not based on declarant’s personal knowledge (Fed. R. Evid. §602); and provides
6 improper expert testimony by the declarant (Fed. R. Evid. § 701, 702).

7 Mr. Powelson does not state any qualifications or expertise to remark on actual or
8 imminent threats to public health and safety.

9 *Court's Ruling on Objection No. 11*

10 Sustained: _____

11 Overruled: _____

12 **Objection No. 12**

13 **Powelson Decl., ¶ 13:** "Attached hereto are true and correct copies of photographs I have
14 taken depicting conditions at the Dunphy Park encampment, including COVID-19 related hygiene
15 supplies, food and other donations, tents with entrances spaced approximately 12 feet apart, etc.
16 The organizations that regularly assist us with food, clothing and other necessities include the
17 Presbyterian Church, students from the local middle school and other charitable and community
18 groups and individuals. They will not come to Marinship Park due to risk of exposure to the
19 airborne toxins described above.”

20 **Grounds for Objection:** Defendants object to this statement on the basis that it lacks
21 foundation (Fed. R. Evid. § 602); provides inadmissible speculation and conclusions (Fed. R.
22 Evid. § 602); is not based on declarant’s personal knowledge (Fed. R. Evid. §602); and provides
23 improper expert testimony by the declarant (Fed. R. Evid. § 701, 702).

24 Mr. Powelson does not establish why he believes he people assisting the encampment “will
25 not come to Marinship Park due to risk of exposure to the airborne toxins described above.” He
26 does not state any qualifications or expertise to remark on alleged health and safety concerns
27 posed by boatcrushing undertaken by the Army Corps of Engineers.

28 *Court's Ruling on Objection No. 12*

1 Sustained: _____

2 Overruled: _____

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4 **OBJECTIONS TO MCGREGOR DECL.**

5 **Objection No. 13**

6 **McGregor Decl. ¶ 2:** “Due to my disabilities, if I am forced to break camp every day at
7 dawn, I will not be able to carry anything with me except a gallon jug of water. My chronic
8 arthritis would become much worse and with my asthma, for which I have to lift my mask to use
9 respiratory devices, I would be at risk for exposure to COVID-19 as I would have to wander the
10 streets during the daytime hours. Also. with asthma, being exposed to weather extremes,
11 dangerous substances in the air, etc. I could suffer an acute asthma attack and actually die with no
12 one around to help me, or too afraid to help me because of all the fear of homeless that the City of
13 Sausalito puts out there.”

14 **Grounds for Objection:** Defendants object to this statement on the basis that it lacks
15 foundation (Fed. R. Evid. § 602); provides inadmissible speculation and conclusions (Fed. R.
16 Evid. § 602); is not based on declarant’s personal knowledge (Fed. R. Evid. §602); and provides
17 improper expert testimony by the declarant (Fed. R. Evid. § 701, 702).

18 Mr. Powelson does not state any qualifications or expertise to remark on alleged
19 “dangerous substances in the air” or increased risk to COVID-19.

20 *Court's Ruling on Objection No. 13*

21 Sustained: _____

22 Overruled: _____

23
24 **OBJECTIONS TO ARNOLD DECL.**

25 **Objection No. 14**

26 **Arnold Decl. ¶ 3:** “I cannot go to Marinship Park where the City wants to force us into
27 because it is next to a facility operated by the U.S. Army Corps of Engineers that every day saws
28 up and crushes fiberglass boats, filling the air with highly toxic visible fiberglass dust, lead paint

1 and other materials that are known to cause lead poisoning, cancer and other disabling respiratory
2 diseases, that spread over the entire park, especially on windy days.

3 **Grounds for Objection:** Defendants object to this statement on the basis that it lacks
4 foundation (Fed. R. Evid. § 602); provides inadmissible speculation and conclusions (Fed. R.
5 Evid. § 602); is not based on declarant’s personal knowledge (Fed. R. Evid. §602); and provides
6 improper expert testimony by the declarant (Fed. R. Evid. § 701, 702).

7 Mr. Powelson does not state any qualifications or expertise to remark on alleged health and
8 safety concerns posed by boatcrushing undertaken by the Army Corps of Engineers.

9 *Court's Ruling on Objection No. 13*

10 Sustained: _____

11 Overruled: _____

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13 **OBJECTIONS TO BRUCE DECL.**

14 **Objection No. 15**

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16 Although Plaintiff cites to the “Declaration of Arthur Bruce” in Paragraph 29 of its Ex
17 Parte Application, no such declaration was submitted in support thereof.

18 *Court's Ruling on Objection No. 15*

19 Sustained: _____

20 Overruled: _____

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