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17

18 Attorney for Plaintiffs

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA

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

27 Plaintiffs,

28 v.

Case Number: 3:21-cv-01143-LB

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED] ORDER**

Judge: Hon. Judge Edward M. Chen
Dept.: Courtroom 5 – 17th Floor

1 CITY OF SAUSALITO; MAYOR JILL JAMES
2 HOFFMAN; POLICE CHIEF JOHN
3 ROHRBACHER; CITY MANAGER MARCIA
4 RAINES; DEPT. OF PUBLIC WORKS
SUPERVISOR KENT BASSO, individually and
in their respective official capacities,

5 Defendants.

6
7 The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT
8 STATEMENT & PROPOSED ORDER pursuant to the [Standing Order for All Judges of the](#)
9 [Northern District of California](#) and [Civil Local Rule 16-9](#).

10 1. Jurisdiction & Service

11 This Court has subject matter jurisdiction over Plaintiffs' claims in this case pursuant to 28
12 U.S.C. §§ 1331 and 1343 because Plaintiffs allege violations of 42 U.S.C. § 1983 and raise
13 questions of federal constitutional law under the Eighth, Fourth and Fourteenth Amendments. No
14 issues exist regarding *persona* jurisdiction or venue, since the events giving rising to this action
15 occurred in Marin County. By agreement between the parties, Sausalito filed its answer to the
16 Complaint on March 22, 2021.

17 2. Facts

18 The following brief chronology of facts are largely undisputed by the parties:

- 19 • On or around December 28, 2020, one individual set up camping gear in an area east of
20 Dunphy Park in Sausalito, California. The encampment area is located on Humboldt
21 Avenue, just north/northeast of 300 Locust Street ("Dunphy Park Encampment"). As of
22 February 16, 2021, there were about twenty people with camping gear in the Dunphy Park
Encampment and it is believed that the number of campers has grown since that date.
- 23 • On February 5, 2021, the Sausalito City Council approved two resolutions regarding
24 homelessness in the City and the encampment at Dunphy Park (Resolutions Nos. 6008 and
25 6009). Per Resolution No. 6009 (the resolution at issue), the City Council prohibited all
26 daytime camping within City limits. In addition, the City Council prohibited all overnight
27 camping, "except for area(s) of Marinship Park designated by the Interim City Manager or
28 her designee . . . by persons who have no option to sleep indoors, pending further action by
the City Council." Under Resolution No. 6009, overnight camping at Marinship Park is
permitted, but day camping is not: "All persons camping overnight must remove all
camping facilities and personal property from Marinship Park between the hours of thirty
(30) minutes after sunrise to thirty (30) minutes before sunset." Resolution No. 6009 was
modified by the meeting minutes to specify that individuals would not be moved from Dunphy

1 Park to Marinship Park until reasonable storage facilities, such as storage lockers, were in
2 place at Marinship Park.

- 3 • On February 9, 2021, the Police Department posted Notices to Vacate around the Dunphy
4 Park Encampment. The Notices to Vacate stated, in relevant part, that the Public Works
5 Department would clear and close the Encampment Area on February 16, 2021,
6 conditioned on the availability of storage at Marinship Park and directing all persons to
7 vacate the site and remove any personal belongings by that time.
- 8 • Prior to the noticed clean and clear of the encampment of Dunphy Park on February 16,
9 2021, six storage units (with two separate enclosed storage lockers per unit, for 12 storage
10 lockers total) were placed in Marinship Park for the daytime storage of personal
11 belongings necessary for overnight camping for individuals who choose to camp overnight
12 at Marinship Park.
- 13 • On February 16, 2021, the Police Department and Public Works Department tried to clear
14 and close the Dunphy Park Encampment. The Departments spoke with encampment
15 members and the public for about two hours. After doing so, it was determined that
16 clearing and closing the Dunphy Park Encampment would not be feasible that day.
- 17 • On February 23, 2021, this Court held an expedited hearing on Plaintiffs' *Ex Parte*
18 Application and Motion for Preliminary Injunction.
- 19 • On March 1, 2021, this Court issued an Order granting Plaintiffs' motion for a preliminary
20 injunction and enjoining Defendants from (1) enforcing the day camping prohibition in
21 Resolution No. 6009 and (2) closing and/or clearing the Dunphy Park encampment
22 ("Order").
- 23 • The Order, however, further states that as for (2) noted above, "[t]he Court does not
24 preclude Defendants from filing a motion to modify or dissolve that specific preliminary
25 injunctive relief if, e.g., they demonstrate that there are no toxic risks at the proposed
26 encampment site at Marinship Park and that the move can be safely accomplished."

27 ***Plaintiffs' Statement of Principal Factual Issues in Dispute:***

28 Plaintiffs dispute Defendants' contention that any camp residents have "options available
to them sleep indoors, including some individuals who are believed to have permanent housing."

Plaintiffs contend that the City misunderstands the holding in *Martin v. Boise*, under which
Resolution 6009 is essentially a city-wide ban without the provision of indoor alternative housing.
With regard to Marinship Park, this Court found that some deficiencies could be resolved, others
pose unresolved and serious risks of harm including, but not limited to, the boat crushing
operation that generates clouds of fiberglass dust and other toxins that blow into the area

1 designated by Defendant for the relocated encampment. Events since the preliminary injunction
2 was issued and this Court's own site visits to both Dunphy and Marinship Park undermine various
3 assertions of Defendants that provision of sanitary facilities, water, etc. to Dunship Park would be
4 impossible. In addition, the existence of restroom facilities –now locked – in Dunship Park within
5 walking distance of the encampment resolves the City's assertion that such facilities do not now
6 exist at Dunphy Park or could be provided.
7

8 ***Defendants' Statement of Principal Factual Issues in Dispute:***

9 The City of Sausalito has taken several actions to support the Dunphy Park encampment.
10 The City has provided an additional portable toilet and wash station (as the permanent bathrooms
11 are not conveniently located to the encampment site), provided a dumpster, and retained Urban
12 Alchemy, a non-profit San Francisco based homeless support organization to lend support to the
13 encampment site three days a week. Despite these efforts, the City maintains that Marinship is a
14 superior and safe location for relocation, as the City intends to demonstrate in a motion to modify
15 the existing preliminary injunction.

16 On information and belief, Defendants allege that some of the individuals have options
17 available to them to sleep indoors, including some individuals who are believed to have permanent
18 housing. Under *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019), these individuals have no
19 constitutional right to sleep or camp outdoors. Defendants dispute that Dunphy Park is a safer or
20 more appropriate encampment area than Marinship Park. In contrast to Dunphy Park, the
21 Marinship Park location has conveniently located male and female permanent bathrooms, and for
22 several years has been the solely authorized and logistically feasible location for mobile showers
23 (supported by social service workers) that service the site at least twice a week. Additionally, the
24 Dunphy Park encampment substantially encroaches upon neighboring private property. The private
25 property owner has informed the City of his objection to this encroachment. Moreover, Defendants
26 dispute that there are any toxic risks at the proposed encampment site at Marinship Park.
27
28

1 3. Legal Issues

2 ***Plaintiffs' Statement of Principal Legal Issues in Dispute:***

3 Plaintiffs assert that enforcement of Resolution 6009 violates substantive due process
4 inasmuch as dispersal of the Dunphy Park encampment without provision of alternative, non-
5 congregant housing during a pandemic that is far from over constitutes indifference to a known,
6 and in this case, potentially lethal risk of great bodily harm or death.

7
8 ***Defendants' Statement of Legal Factual Issues in Dispute:***

9 Defendants contend that (1) enforcement of Resolution No. 6009 with respect to its ban of
10 daytime overnight camping does not violate the substantive due process rights of individuals (or
11 any other right under federal or state law); and (2) enforcement of Resolution No. 6009 with
12 respect to its limitation on overnight camping does not violate the substantive due process rights of
13 individuals (or any other right under federal or state law); and (3) that Plaintiffs have not and
14 cannot satisfy their burden of proof at trial that the "state created danger" exception to the general
15 rule that the due process clause does not require a government to protect a plaintiff applies in this
16 case.

17 4. Motions

18 Plaintiffs' *Ex Parte* Application for a Temporary Restraining Order and Motion for
19 Preliminary Injunction was heard by this Court on February 23, 2021. The Court granted the
20 Motion for a Preliminary Injunction on March 1, 2021. There are no other prior or pending
21 motions before this Court.

22 ***Plaintiffs' Anticipated Motions:***

23 Only this morning, March 25, 2021, Plaintiffs' counsel learned of a police action at the
24 Dunphy Park encampment which included threats to have a child taken from its mother, to have
25 encampment residents arrested for "trespass" and generally frightening and intimidating campers
26 to the point where they now fear for their safety and security of the encampment, itself, on
27 whatever pretext the City may use to justify police action. Efforts to convince Counsel for
28

1 Defendants to contact his clients and have police stand down were unavailing. Plaintiffs are now
2 preparing the necessary declarations and other evidence on which to base a Motion for Order to
3 show cause why Defendants should not be held in contempt for violation of the preliminary
4 injunction and will file said motion as soon as possible.

5 Plaintiffs are also considering—but have not yet decided to file -- a motion to disqualify
6 opposing counsel based on confidential information and attorney work product materials provided
7 to another Sheppard Mullin partner who considered, but ultimately declined to assist Plaintiffs'
8 attorney in the case of *Acosta v. City of Salinas*. Although it was a 2016 case, discussions
9 involved the legal tactics used by the Salinas Homeless Union which are still used in current
10 Homeless Union cases, including the case at bar. Plaintiffs also reserve the right to bring
11 discovery-related motions and possibly to modify the current preliminary injunction.
12

13 ***Defendants' Anticipated Motions:***

14 As a preliminary matter, in response to Plaintiffs' accusations above regarding the events
15 of March 25, 2021 and threatened Order to show Cause, Sausalito refers the Court to Defendants'
16 counsel, Arthur Friedman's email to Plaintiffs' counsel, Anthony Prince of March 25, 2021
17 summarizing the events of that day – **attached herewith as Attachment A**. As shown,
18 Defendants clearly did not in any way violate the Court's injunction. To the contrary, the City
19 took prompt and necessary actions to ensure public safety and de-escalate a situation caused by
20 Plaintiffs' unlawful actions.

21 Pursuant to the Court's Order granting Plaintiffs' Motion for a Preliminary Injunction
22 (Dkt. No. 20), Defendants intend to file a motion to modify and/or dissolve the injunctive relief
23 preventing Defendants from relocating the encampment from Dunphy Park to Marinship Park
24 based on evidence demonstrating there are no toxic risks at the proposed encampment site at
25 Marinship Park and that the move can be safely accomplished. Defendants also reserve all rights
26 to file a Motion for Summary Judgment and/or Adjudication. Defendants would like to schedule a
27 hearing on that motion during the last week of April.
28

1 5. Amendment of Pleadings

2 Not applicable at this time.

3 6. Evidence Preservation

4 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
5 Stored Information (“ESI Guidelines”), and confirm that they have met and conferred pursuant to
6 Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence
7 relevant to the issues reasonably evident in this action.

8 7. Disclosures

9 In conjunction with the filing of this Joint CMC Statement, the parties will file their
10 respective initial disclosure pursuant to Fed. R. Civ. P. 26 and including their lists of witnesses
11 and descriptions of categories of documents, electronically stored information, and tangible things
12 that it has, or may have, in its possession, custody, or control and may use to support its claims or
13 defenses.

14 8. Discovery

15 No discovery has been taken to date to date by either party and neither party proposes
16 limiting or modifying the discovery rules. Both parties anticipate serving written discovery
17 requests pursuant to the discovery rules and thereafter conducting percipient and expert
18 depositions as necessary. The parties continue to discuss whether entering into a stipulated e-
19 discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified
20 discovery disputes makes sense for this particular matter.

21

22 9. Class Actions

23 Not applicable.

24

25 10. Related Cases

26 There are no related cases or proceedings pending before another judge of this court, or
27 before another court or administrative body.

28

1 11. Relief

2 Plaintiffs may seek relief from the enforcement of Resolution 6009 both during and
3 possibly beyond the current pandemic.

4 12. Settlement and ADR

5 There have been no ADR efforts to date. Defendants intend to file a motion to modify
6 and/or dissolve the injunctive relief preventing Defendants from relocating the Dunphy Park
7 Encampment to Marinship Park based on evidence demonstrating there are no toxic risks at the
8 proposed encampment site at Marinship Park and that the move can be safely accomplished. After
9 the Court issues a ruling on said motion, Defendants are amenable to mediating the case before a
10 private or Court-sponsored mediator and/or attending a mandatory settlement conference, to the
11 extent feasible.

12 13. Consent to Magistrate Judge For All Purposes

13 Whether **all** parties will consent to have a magistrate judge conduct all further proceedings
14 including trial and entry of judgment. ____ YES X NO

15 14. Other References

16 The parties agree that this case is not suitable for reference to binding arbitration, a special
17 master, or the Judicial Panel on Multidistrict Litigation.

18 15. Narrowing of Issues

19 Defendants propose to narrow the factual issues by filing a Joint Stipulation of Facts and
20 narrowing the legal issues to those presented in Section 3 above.

21 Plaintiffs are not opposed to a narrowing or a more particularized description of the factual
22 issues but are for now opposed to a narrowing of the legal issues presented to date.

23 16. Expedited Trial Procedure

24 The parties have met and conferred and do not believe that this case is suitable for
25 expedited trial procedure under General Order 64, Attachment A.

26 Plaintiffs reserve the right to seek an expedited trial procedure, given that the resumption
27 of enforcement of Resolution 6009 will have the effect of pushing plaintiffs out of Sausalito
28 altogether making it extremely difficult if not impossible for them to prepare for and participate in

1 the trial or even be able to establish a reliable means of communication with Counsel for that
2 purpose.

3 17. Scheduling

4 Defendants propose the following dates and deadlines:

Event	Deadline/Cut-Off/Date
Initial ADR Session	June 2021
Non-Expert Discovery Cut-Off	September 17, 2021
Expert Disclosure	September 17, 2021
Rebuttal Expert Disclosure	October 8, 2021
Expert Discovery Cut-Off	October 29, 2021
Filing of Dispositive Motions	November 18, 2021
Hearing of Dispositive Motions	December 23, 2021
Joint Pretrial Conference Statement / Trial Briefs	February 15, 2022
Pre-Trial Conference	March 8, 2022 at 2:30 p.m.
Trial	April 4, 2022 at 8:30 a.m.

13 Plaintiffs oppose Defendants' proposed schedule inasmuch as they may move for an
14 expedited trial process provided above in Section 16.

15 18. Trial

16 Defendants propose that the issues of fact will be heard before a jury and expect the trial to
17 last 3-5 days.

18 Plaintiffs propose that trial before a jury will last between 8 and 10 days.

19 19. Disclosure of Non-party Interested Entities or Persons

20 Defendants are comprised of a governmental entity and individuals sued in their official
21 capacity and are therefore exempt from the requirements of Civil Local Rule 3-15.

22 20. Professional Conduct

23 All attorneys of record for the parties have reviewed the Guidelines for Professional
24 Conduct for the Northern District of California.

26 21. Other

27 The parties have met and conferred and continue to discuss such other matters that may
28 facilitate the just, speedy and inexpensive disposition of this matter.

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Dated: March 25, 2021

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Arthur J. Friedman
ARTHUR J. FRIEDMAN
ALEXANDER L. MERRITT

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

Dated: March 25, 2021

LAW OFFICES OF ANTHONY D. PRINCE

By /s/ Anthony D. Prince
ANTHONY D. PRINCE
Attorneys for Plaintiffs

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

Hon. Judge Edward M. Chen

ATTACHMENT A

Nayeli Saucedo

From: Arthur Friedman
Sent: Thursday, March 25, 2021 11:28 AM
To: Anthony Prince
Cc: Alex Merritt; Mary Wagner
Subject: Response To Your Accusations Of Today

Mr. Prince

This morning, as you know I received a call from you asserting that the Sausalito Police Department was threatening to arrest persons at Dunphy Park for trespass, threatening to separate mothers from their children, and thus you demanded that the Sausalito Police Department stand down immediately or you would move for contempt sanctions.

I immediately contacted City officials to investigate, and can now provide the following summary of recent events. Apparently, Ms. Diane Moyer was recently discovered by RBRA as deceased on her house boat vessel located in RBRA waters. Ms. Moyer's brother instructed RBRA to tow and abate the vessel. RBRA in response towed the vessel to the Army Corp's abatement yard in Sausalito.

Last night, the vessel was stolen from the Army's Corp's yard and discovered this morning in protected waters near the Dunphy Park encampment. Upon arriving at the scene, the Sausalito Police Department secured the plank access to prevent persons from boarding the vessel. We understand, however, that a Mr. and Mrs. Ortega and their child boarded the vessel, as did your client, Mr. Paulson, who did so by swimming to it.

As there were concerns with the sea worthiness of the vessel, the Coast Guard was notified and arrived at the scene.

We understand that Mr. Paulson and the Ortega's wish to preserve the vessel and object to its destruction. In an effort to alleviate this situation, the City of Sausalito this morning obtained assurances from RBRA that it would not abate the vessel until resolution of this dispute among the interested parties.

Following this agreement, RBRA's retained tow company arrived at the scene to tow the vessel back to the Corp's yard. Sausalito police were assisting the Ortega family disembark from the vessel when your client, Robbie Paulson, interfered with their efforts. Sausalito police therefore arrested Mr. Paulson. I understand that he will be cited for this unlawful conduct and released today. The vessel has since been towed back to the Corp's yard.

The City of Sausalito has not in any way violated the terms of the Court's injunction, and your accusations and threats to the contrary are unfounded and improper. The City of Sausalito volunteered in this case to de-escalate a problem not of its making, which was brought to Sausalito and exacerbated by your client's unlawful actions.

Arthur Friedman | Partner
+1 415-774-2985 | direct
afriedman@sheppardmullin.com | [Bio](#)

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PROOF OF SERVICE

Sausalito/Marin County Chapter Of The California Homeless Union et al. v. City Of Sausalito et al.
CASE NO. 3:21-cv-01143-LB

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is Four Embarcadero Center, 17th Floor, San Francisco, CA 94111-4109.

On March 25, 2021, I served true copies of the following document(s) described as **JOINT CASE MANAGEMENT STATEMENT & [PROPOSED] ORDER** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 25, 2021, at San Francisco, California.



Nayeli R. Saucedo