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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

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

20 Plaintiffs,

21 v.

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

27 Defendants.  
28

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

**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION TO SHOW  
CAUSE WHY DEFENDANTS SHOULD  
NOT BE HELD IN CONTEMPT FOR  
VIOLATING THE PRELIMINARY  
INJUNCTION**

Date: April 29, 2021  
Time: 1:30 p.m.  
Courtroom: 5 – 17<sup>th</sup> Floor

Action Filed: February 16, 2021  
Trial Date: T.B.D.  
Judge: Hon. Edward M. Chen

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1 **I. INTRODUCTION**

2 Plaintiffs’ Motion to Show Cause (“Motion”) is premised on multiple omissions of  
3 material facts and misrepresentations. The Motion argues that the “Sausalito Police Department  
4 initiated an action at the encampment at Dunphy Park,” and “attempted to seize a boat that legally  
5 belonged to the descendants of the recently deceased owner.” (Mtn., p. 1.). In fact, the Sausalito  
6 Police Department did not initiate, but rather responded on March 25, 2021 to the discovery of a  
7 house boat (“vessel”) anchored in prohibited waters off the shore of Dunphy Park that was stolen  
8 the previous night from the Richardson Bay Regional Agency’s (“RBRA”) custody at the United  
9 States Army Corp. of Engineers (“ACOE”) facility in Sausalito. Moreover, the Sausalito Police  
10 Department did not attempt to “seize” the vessel against the wishes of the descendants of the  
11 recently deceased owner, but rather sought to secure the vessel to enable RBRA to return the  
12 stolen vessel to the ACOE facility consistent with the descendent owner’s instructions.

13 However, during the morning of March 25, Plaintiff Robbie Powelson and other  
14 encampment members with their infant children trespassed onto the vessel and refused to  
15 disembark, placing themselves and responding officers in danger because of visibly hazardous  
16 conditions on the vessel, including exposed nails, rotten planks and animal/human feces. As these  
17 events unfolded, Defendants voluntarily alleviated the dispute by obtaining RBRA’s agreement to  
18 not destroy the vessel pending resolution of competing claims between the descendant owners,  
19 RBRA and certain encampment members. Following this agreement, all of the persons unlawfully  
20 occupying the vessel except for Mr. Powelson voluntarily disembarked. Mr. Powelson was  
21 arrested for his refusal to disembark despite repeated warnings, but then released with a citation  
22 later that day. The vessel was then towed back to the ACOE facility where it remains today.

23 Defendants did not take any actions in violation of this Court’s preliminary injunction  
24 enjoining them from “closing and/or clearing the Dunphy Park encampment.” Instead, responding  
25 police officers lawfully exercised their public safety and criminal enforcement duties – none of  
26 which are prohibited by this Court’s enjoining of Resolution No. 6009. Plaintiffs present no  
27 evidence of any words or actions taken by any responding officers directed at any of the other  
28 encampment members who were not occupying the vessel – as further illustrated by the fact that

1 the Motion is supported solely by declarants who were directly involved in the unlawful activities.  
2 The Court should deny the Motion.

3 **II. FACTUAL BACKGROUND**

4 On March 22, 2021, Ms. Diane Moyer was found deceased on her vessel in the  
5 jurisdictional waters of RBRA. (Declaration of Jill Hoffman, Ex. 1 [e-mail dated March 25, 2021  
6 from RBRA Harbormaster, Curtis Havel.]) On March 23, 2021, RBRA staff spoke with Ms.  
7 Moyer's brother, Irwin Karasik, who instructed RBRA to tow the vessel to the ACOE facility in  
8 Sausalito for abatement after providing Michael Ortega Haas an opportunity to retrieve belongings  
9 from it. (*Ibid.*)

10 On March 24, 2021, Parker Driver Services on behalf of RBRA commenced towing the  
11 vessel to the ACOE facility. Mr. Ortega-Haas approached in a dinghy and was informed that he  
12 would be provided an opportunity to retrieve belongings from the vessel consistent with Mr.  
13 Karasik's wishes. (*Id.*, pp. 3.)

14 Upon arrival at the ACOE facility on the afternoon of March 24, 2021, the vessel was  
15 secured to the east face of the debris dock. RBRA intended to pull the vessel out of the water and  
16 onto a ramp to provide better, safer access to individuals retrieving belongings. (*Id.*, p. 3.) While  
17 making preparations to pull the vessel on to the ramp, plaintiff, Robbie Powelson, entered the  
18 water on a kayak and tied himself to the vessel. (*Ibid.*) RBRA placed a call to the Sausalito police  
19 department for assistance as Mr. Powelson refused to leave. (*Ibid.*; Declaration of John  
20 Rohrbacher, ¶¶ 9-10) The Sausalito Police report describes the following scene:

21 Upon arrival I noticed Powelson had tied himself to a houseboat that was partially  
22 removed from the water. A portion of the houseboat was on the boat ramp at the  
23 location and the rest was in the water. Harbor Master Havel was on his vessel  
adjacent to the houseboat in question and several other subjects were on the  
shoreline outside the ACOE fence.

24 One of the subjects was Michael Ortega and the other is unknown at this time. All  
25 were yelling at Havel as I arrived. Several ACOE employees were also in the  
debris yard due to the commotion that Powelson was causing.

26 (*Id.*, Ex. 2 [police report], p. 4.) The Sausalito Police report states further:

27 This is one of many recent incidents over the past year involving Mr. Powelson  
28 trespassing on ACOE dock. The dock is closed off to the public by fencing that is  
topped with razor wires. Along the fence are numerous signs which read "NO

1 ADMITTANCE – AUTHORIZED PERSONNEL ONLY” and “NO  
2 TRESPASSING.” The same signage is displayed from the water side of the dock  
as well.

3 In each case he has either tied himself to a boat, boarded a boat or walked through  
4 an open gate to the property without permission. Powelson does this to protest and  
5 or delay Harbor Master Havel’s duties of vessel abatement. Powelson has been  
advised not to be on the property and has been warned that he would be arrested for  
trespassing if he returned.

6 (*Ibid.*) The Sausalito Police department mediated the situation whereby RBRA staff departed the  
7 ACOE facility and the vessel remained in the water, secured to the debris dock. (Hoffman Decl,  
8 Ex. 1, p. 3.)

9 During the night/early morning of March 24/25, the vessel was stolen from the ACOE  
10 facility. (*Ibid.*; Rohrbacher Decl., ¶¶ 15-16, 25, Ex. 4 [police report], p. 3.) At approximately 8:50  
11 a.m. on March 25, 2021, Sausalito police discovered the vessel anchored in the Bay adjacent to the  
12 encampment site along the shoreline of the south end of Dunphy Park. Sausalito Municipal Code  
13 (“SMC”) Section 16.04.050 provides that it is unlawful for any person to moor any vessel, or  
14 place, build, construct or maintain any water structure, in the waters of Dunphy Park. (Rohrbacher  
15 Decl., Ex. 4, p. 3.)

16 Sausalito police discovered the vessel approximately 15 feet from shore, connected to the  
17 shore by a wooden plank. Police officers observed a woman with two children who appeared to  
18 be less than 2 years of age standing on the lower level of the vessel while Mr. Powelson was  
19 sitting on the wooden latter leading to the roof of the vessel. (*Ibid.*) Sausalito police additionally  
20 observed many hazards on the vessel, including many planks with exposed nails, rotten wooden  
21 deck planks, animal and possible human feces all over the deck. The interior of the boat appeared  
22 to be in major disrepair and was not habitable. (*Ibid.*, Rohrbacher Decl., Ex. 3 [photos]). A few  
23 minutes later, another woman and child boarded the vessel.

24 Sausalito police officers ordered all occupants off of the vessel so that it could be towed  
25 back to the ACOE facility. (Rohrbacher Decl., Ex. 4, p. 3.) The occupants, however, refused to  
26 disembark the vessel. As these events unfolded, Sausalito Mayor Jill Hoffman reached out to  
27 RBRA and Harbormaster Havel confirmed that RBRA would not abate the vessel until all issues  
28 were resolved with the interested parties. (Hoffman Decl., ¶¶ 2-4, Ex. 1.)

1           Thereafter, one of the two women disembarked with her two children. The other woman  
2 and child and Mr. Powelson remained on the vessel. At approximately 10:15 a.m., the second  
3 woman disembarked with her child by inflatable skiff tied to the vessel. Mr. Powelson, however,  
4 still refused to disembark. After Sausalito police officers warned Mr. Powelson multiple times  
5 that he would be arrested for trespass if he continued to refuse to disembark, he was arrested and  
6 removed from the vessel. (*Ibid.*) The vessel was then towed back to the ACOE facility where it  
7 remains today. Mr. Powelson was cited with a preassigned court date of May 6, 2021 and released  
8 from custody later that day. (*Ibid.*)

9 **III. ARGUMENT**

10           The Motion falsely argues that on the morning of March 25, 2021, Defendants in  
11 responding to the discovery of the vessel off the shore of Dunphy Park violated this Court’s  
12 Preliminary Injunction enjoining them from “closing and/or clearing the Dunphy Park  
13 encampment.” Plaintiffs’ burden of proof on this motion is to show by clear and convincing  
14 evidence that the contemnors violated a specific and definite order of the court. (*F.T.C. v.*  
15 *Affordable Media*, 179 F.3d. 1228, 1239 (9th Cir. 1999). However, as shown, Plaintiffs have not,  
16 and cannot show by any standard of review that Defendants violated this Court’s preliminary  
17 injunction.

18           The Sausalito Police Department did not “initiate” an action on March 25, 2021 to  
19 improperly “seize” a vessel belonging to others as the Motion falsely argues, but instead  
20 responded to: (1) the discovery of a vessel stolen from federal property; (2) anchored off the shore  
21 of Dunphy Park in violation SMC Section 16.04.050; (3) occupied by trespassers; (4) including  
22 young parents and their infant children who were in danger because of visibly hazardous  
23 conditions on the vessel.

24           Plaintiffs argue that a half dozen members of the Marin County Sheriffs’ office “traversed  
25 the encampment,” which had the “effect” of frightening all camp residents. (Paulson ¶ 3.)  
26 However, Plaintiffs’ photographic evidence as well as the evidence submitted with this Opposition  
27 show that police activity was limited to the shoreline adjacent to the stolen vessel and directed  
28 solely at persuading the individuals (including those with infant children) unlawfully occupying

1 the hazardous vessel to safely disembark so that the vessel could be secured and returned to the  
2 ACOE facility.

3 Finally, Plaintiffs’ assertion that law enforcement’s response has created fear among the  
4 encampment members analogous to “constructive eviction” is unsubstantiated and refuted by at  
5 least the following facts. First, Plaintiffs offer no evidence of Defendants’ alleged “construction  
6 eviction” strategy beyond the police activity on the morning of March 25 in response to the  
7 unlawful actions of plaintiff Robbie Powelson and other encampment members. Contrary to  
8 Plaintiffs’ false accusation, as set forth in the City’s accompanying motion to modify the  
9 injunction to relocate the encampment site, the City has taken several concrete steps to improve  
10 conditions at the Dunphy Park encampment, while maintaining that Marinship Park is a far  
11 superior encampment location. Second, while responding police officers may have walked  
12 through or near portions of the encampment to gain access to the shoreline adjacent to the vessel,  
13 Plaintiffs present no evidence of any actions or statement made by any law enforcement official  
14 directed at any encampment members or their property other than those unlawfully occupying the  
15 vessel. To the extent Mr. Powelson and the other declarants in support of the Motion felt  
16 uncomfortable or intimidated by police officials’ presence at or near the encampment site, they  
17 brought and exacerbated such circumstances to the encampment site by their unlawful actions.

18 **IV. CONCLUSION**

19 Defendants respectfully request that the Court deny the Motion because it is baseless and  
20 should not have been filed.

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