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8 **UNITED STATES COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA**

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

20 Plaintiffs

21 vs.

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

Defendants.

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

**SUPPLEMENTAL DECLARATION OF
ROBBIE POWELSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN ORDER
TO SHOW CAUSE WHY DEFENDANTS
SHOULD NOT BE HELD IN CONTEMPT
AND FOR MODIFICATION OF
PRELIMINARY INJUNCTION**

Date: December 9, 2021

Time: 1:30 pm

Courtroom: 5-17th Floor

Courtroom: Zoom Videoconference

Judge: Hon. Edward M. Chen

DECLARATION OF ROBBIE POWELSON

I Robbie Powelson do declare:

1. On May 9, 2021, before I was relocated to Marinship Park, I observed that restroom facilities at Marinship did not work, so I assumed they would not force me to go to there. As President of the Union and a named plaintiff in this case, I was aware that the City was required to replace the sinks, urinals and toilets and provide hygiene items in or

1 around the restrooms before campers removed from Dunphy Park would be relocated to
2 Marinship Park. Attached hereto as **Exhibit A**, is a true and correct copy of City of
3 Sausalito Operations and Maintenance Plan, Marinship Park (Defendants' Document 27-
4 5, pgs. 54,55.)

5 2. To date, the City has not made the required upgrades or installed new sinks or toilets.
6 Attached hereto as **Exhibit B** are true and correct copies of photographs depicting the
7 sink and toilet in the men's restroom before the establishment of the Marinship Park
8 encampment. Attached hereto as **Exhibit C** are true and correct copies of photographs
9 depicting the sink and toilet in the men's room taken on December 1, 2021. These
10 photos show that the facilities have not been replaced. While blaming residents for
11 "sabotaging" the restroom facilities, the City obviously knew in advance that the existing
12 sanitary facilities would be inadequate to handle the burden represented by the use by at
13 least 40 people living in the park and using the restrooms 24 hours a day.

14 3. On October 25, 2021, a woman with apparent serious mental health problems was at the
15 restrooms at Marinship Park. We had regularly called the police for assaulting people at
16 the camp and doing damage to the bathroom but police have consistently refused to
17 arrest or otherwise prevent her from committing personal assaults and vandalism.

18 4. On October 25th, Urban Alchemy called the police on this woman for throwing debris
19 into the street. When I stepped into the street and called out, she continued to throw
20 things into the street and close to me. When SPD Officer Brian Mathers arrived, I
21 offered to show him footage of her throwing debris. I told him that she was frightening
22 residents, clogging toilets, and damaging the towel dispensers in the bathroom.

23 5. Officer Mathers refused to inspect my footage of her throwing debris into the
24 roadway, and close to my body. He scolded me for trying to make a report. He said that
25 charges against a mentally ill women would be immoral. I replied that what was truly
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1 immoral was the city refusing to house this woman and forcing us all to be put into
2 harm's way by her assault behavior and vandalism of shared community resources.

3 Officer Mathers then left without any resolution of my complaint or making any effort to
4 deter the woman in question from engaging in misconduct, offer her help or refer her to
5 any services. Neither did Officer Mathers inspect the restrooms or do anything to
6 facilitate the necessary cleaning and repairs therein.

- 7
8 6. The City's Operations and Maintenance Plan for Marinship Park requires "routine
9 cleaning and re-stocking of soap, paper towels toilet paper, seat covers, and hand
10 sanitizer (containing at least 60% alcohol) every weekday (Monday-Friday)[.]"

11 However, such daily cleaning has been spotty at best. I have returned to the restroom
12 many times over the last six months from one day to the following day only to see the
13 same debris and overfilled trash receptacle. This neglect has worsened in the aftermath
14 of the Oct. 23-24 storm.

- 15
16 7. In addition, the Operations and Maintenance Plan states that "the City will supply and
17 regularly re-stock reasonable personal protective equipment (PPE) in or around the
18 Permanent Restroom Facilities, including protective face masks, gloves and sanitizing
19 supplies as necessary[.]" However, the City has failed to regularly replace these items
20 and, as of this declaration, are nowhere to be found in or around the restrooms.

- 21
22 8. On November 22, 2021, almost a month after the storm of October 23-24, Jeff Chase,
23 Holly Wild, Tim Logan, Rafael Lopez, and I pitched camp during the day and erected
24 poster signs in Robin Sweeny Park in front of City Hall. We were camping outside of the
25 sewage leak at Marinship, and to protest the mistreatment of unhoused people. The next
26 day, during the daylight hours, November 23, 2021, all of our tents were confiscated and
27 we were ordered to go to Marinship Park.

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1 9. When Officer Nick White began to use what I believed was unnecessary force to arrest
2 Holly Wild, and I protested, White let go of Holly and began to arrest me. Officer
3 Thomas Georges grabbed me by my throat, constricting my windpipe. I was not giving
4 them any physical resistance, despite George's choking me to the point that I was
5 gasping and could not speak without having a raspy tone. Attached hereto as **Exhibit D**
6 is a true and correct copy of a series of emails and accompanying photographs depicting
7 the arrest.
8

9 10. I was then thrown into the police vehicle. I could see Holly jump into a work truck with
10 all of our possessions in it, trying to retrieve personal items including her COPD
11 medication, before she was also arrested and put into a police car. We then went to
12 Sausalito PD station, then Marin County Jail. I had to request a mask because I had been
13 ill the week prior with a viral illness.
14

15 11. We then went to jail and spent an hour before getting out. I left with \$65, but if
16 recollection serves me I recalled entering with at least a few twenty dollar bills but when
17 I left there were no twenty dollar bills. I called Sausalito PD dispatch to ask for our
18 possessions and she told me she couldn't coordinate anything with me, but that an
19 officer would get back in touch with me. I was looking for my suitcase, phone, laptop.
20 We could not find Jeff who had Holly's keys. We went back to Holly's car. When we
21 arrived, I could see that Holly had a ticket on her windshield, the parking attendant was
22 rolling up, and a tow truck. We realized they were towing her car. We jumped out and
23 tried to stop the towing.
24

25 12. The parking enforcement officer called the police. Officer Georges, Officer White,
26 and Officer Smgalsk showed up and stated that that they were going to take the car
27 because it was unregistered for more than 6 months. I know that they had known this for
28 months as Holly's car was lacking current tags and the police had seen her driving in and

1 out of the encampment for many months. Holly became upset, climbing into her car and
2 locking it for fear of being abused again by the police, having them once again
3 confiscating her possessions including her medication and losing the only safe place she
4 had to sleep and stay safe. Nevertheless, the vehicle was towed with all of Holly's
5 possessions in it.

6
7 13. On November 28, 2021, I received a call from Ken Kennedy saying he personally
8 witnessed three police officers confiscating a tent during the daytime hours that he had
9 said to have known was Holly Wild's. I called the police department and received a call
10 back from SPD Officer Brian Mathers who confirmed that the tent had been confiscated.
11 He refused to release any of the survival gear.

12
13 14. On November 29, 2021, at 7:30 am, I woke up in the parking lot of Marinship Park, in
14 the small part of the lot where we have been told to camp overnight. The lot was so full,
15 a van was parked in the bike lane, and another parked against the concrete barricades.

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17 15. About 45 minutes later, at approximately 8:15 am, I witnessed Officers Mathers,
18 Georges, Mitchell, White, Mathers and Lieutenant Stacey Gregory take possession of a
19 wooden half-shelter built by the family of Daniel Eggink, an 83-year-old military
20 veteran, whose daughter, Jewel and wife also live in Marinship Park. They are caretakers
21 for Daniel Eggink who had been severely impacted by the storm one month earlier and
22 had been walking around and sleeping on soil proved later to be contaminated, at great
23 consternation to his family. Attached hereto as **Exhibit E** is a true and correct copy of
24 photographs depicting the partial structure built to protect Mr. Eggink.

25
26 16. The materials used to build the structure had been left in the area immediately in front of the
27 camp entrance where community members routinely drop off donations. Since the October
28 23-24 storm, these donations have included lumber and other building materials. I am aware

1 that the City claims the boards were stolen and meant to be used by the City as platforms in
2 the tennis court.

3 17. However, since the boards were not located in the fenced and locked tennis courts, but were
4 in the donations area, it is possible that the builders of the half-shed simply thought they had
5 been donated. It is also possible that they were simply taken and used to protect Mr. Eggink
6 from walking around and sleeping on contaminated ground given that he is probably the
7 oldest and most frail member of the encampment who deserved to be treated accordingly. At
8 an unknown time before police kicked Mr. Eggink out of the the half-shed, police took a
9 photograph of him on the floor asleep in a sleeping bag. This photograph is already in
10 evidence. Attached here as **Exhibit E** is a true and correct copy of photographs depicting the
11 half-shed structure built for Daniel Eggink
12

13 18. On the day he was ejected, Mr. Eggink was returning to the half-shed to rest when
14 Officer Brian Mathers got in front of the doorway and denied his entrance. Police then took
15 all of his possessions out of the structure, in spite of having posted no notices whatsoever,
16 and against Mr. Eggink's protestations that they were violating his rights.

17 19. As President of the Union, I informed the officers that the Court had earlier issued an
18 order preventing them from taking down an earlier-constructed shed that was being used
19 as a storage facility for items donated by the community and that in the order, the Court
20 had not restricted campers from erecting other structures. I informed police that Mr.
21 Eggink was only using the half-shed to rest. No "stop work" order or notice to vacate
22 was posted. Police simply showed up, entered the camp, removed Mr. Eggink's
23 possessions, dismantled the structure and put up crime tape all around the location. I
24 asked Lieutenant Stacey Gregory directly if she would be providing a tent or alternative
25 structure for Daniel. She did not answer. I then asked her if she was refusing. She looked
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1 at me and did not answer. Shortly thereafter, City employees tore down the structure and
2 left with the lumber.

3 20. The following day, Daniel Eggink's daughter Jewell Eggink, very upset about what had
4 happened to her father, was arrested for drinking in public. Excessive force was used in
5 her arrest which I witnessed. Attached hereto as **Exhibit F** is a true and correct copy of a
6 photograph depicting one of the injuries inflicted on Ms. Eggink by arresting officers.

7
8 21. After that I tried to get a tent for Holly and myself. I called the dispatch again as
9 instructed by Department of Public Works Director Loren Umbertis to get some of the
10 city donated tents. The dispatcher had no idea that we were being directed to call
11 dispatch to get those tents. After 10 minutes of putting me on hold, she told me she
12 would call me back. About ten minutes later Officer Georges called me and said that
13 Chief Rohrbacher had instructed him not to give any tents to anybody and that I should
14 not waste his or my time coming to the police station where we had earlier been told by
15 dispatch to go for the tents. Attached hereto as **Exhibit G** is a true and correct copy of an
16 email I sent to Chief Rohrbacher on November 23, 2021 asking him to explain and
17 justify why tents were being withheld. He never replied or otherwise provided me with
18 an explanation or denial that he ordered the tents withheld.
19

20 **The City has repeatedly ignored our concerns and evidence regarding potential post-**
21 **storm contamination of Marinship Park and is refusing to disclose the results of its**
22 **own sampling.**

23 25. Attached hereto as **Exhibit H** is a true and correct copy of a Homeless Union Press
24 Release on the contamination of Marinship Park of which I was the principal author.
25 The information it contains, the accuracy of which I affirm, is fully incorporated
26 herein to this Declaration. We distributed the press release widely and especially to
27 our fellow Marinship Park campers because the City was refusing to conduct
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1 sampling or take our concerns seriously and campers were very worried about their
2 health if they remained in the park.

3 25. Attached hereto as **Exhibit I** is a true and correct copy of a series of photographs
4 depicting the presence of water which has continually been pooling since the storm of
5 October 23-24 on which I personally collected samples later analyzed by a laboratory
6 that found elevated levels of fecal coliform. I had been advised to take such samples by
7 City Sewer Director Patrick Guasco. At no time have any city officials or contractor
8 come to take water samples. When City inspectors finally showed up weeks after we
9 voiced our concerns and provided the City with documentation showing potential
10 contamination, they took only soil samples and refused to take any samples of the water.

11 26. The photographs also depict covers that we have used to somewhat reduce the
12 bubbling up and to warn our fellow campers to avoid stepping into or around. Attached
13 hereto as **Exhibit J** is a true and correct copy of a series of photographs depicting me as
14 I collected samples from standing and bubbling pools of brackish, discolored and foul-
15 smelling water as well as covers we obtained and placed to tamp down the pooling water
16 and prevent campers from stepping into or near contaminated water and soil. Attached
17 hereto as **Exhibit K** is a true and correct copy of a series of photographs depicting
18 covers we obtained and used to prevent, as best we could, the bubbling up of the
19 potentially contaminated water and to keep campers from walking through the growing
20 pools.
21 22. Attached hereto as **Exhibit L** is a true and correct copy of an email and photographs
22 attached thereto that I sent to Loren Umbertis, Director of the Sausalito Department of
23 Public Works. The email read as follows, but here I have corrected spelling errors:

24 Mr. Umbertis:
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1 Please see our most recent water samples for Enterococcus. We tested both of the
2 samples from the open pools of water in the front center of the camp which are
3 labelled as "Irrigation Valve" and "Right Hole" in this report that I showed you in
4 person as well as your testing agent Randy on Monday. We also test the water in the
5 tire track that is on the west adjacent entrance to the camp. We did these tests on the
6 advice of Patrick Guasco, who recommended to me that the tests include
7 enterococcus to test for fecal matter from warm blooded animals. These test results
8 show conclusively that there is an extraordinary amount of enterococcus in the
9 ground water at the camp, strongly suggesting that the fecal counts are coming from
10 the waste of warm-blooded animals.

11 Given Kevin McGowan's admission at October 26th City Council meeting that there
12 were septic overflows in the northern part of the City, I am attaching an aerial photo
13 from google maps of Marinship Park that shows green patterning grass in the midst
14 of a brown field. The fact that the grass is brown in the picture shows irrigation was
15 not being done at the time of the photo. However the green patterning shows that
16 there is some kind of subterranean water distribution occurring that is causing the
17 grass to be green. Based on my personal knowledge from my past employment as a
18 plumbing technician, I find the patterns to suggest an underground drainage system
19 using perforated piping to release water into bodies of soil commonly done in leach
20 fields for grey and black water disposal which I have worked on in the past. I would
21 like the city to determine why this patterning occurred and whether there is
22 subterranean drainage system coming into the park. If so, I would like the city to
23 determine whether this drainage system is compromised by a septic overflow that
24 might explain the high levels of enterococcus.

25 I would stress the urgency of the situation because there has been 7 emergency visits
26 from people in the camp with non-descript viral and bacterial infections since the
27 storm. Indeed, I went to the emergency room last night for what my attending
28 physician deemed a "viral illness" and said that virus and bacteria can be spread by
human waste.

Thank you,

Robbie Powelson

23. I have been able to identify the following seven persons who have contracted illness or
have suffered aggravation of existing condition with symptoms and physical
manifestations that have appeared since exposure of these campers to the water and soil
at Marinship Park. Our ability to determine if others have been impacted in this way is
limited, but it is likely that the numbers are significantly greater than the seven campers
identified here:

These individuals, are:

1 Ken Kennedy – open sores with infectious staphylococcus scarring, **Photo Exhibit M.**

2 Clarence Wertz – staphylococcus epidermitis infection –(See Declaration of Clarence
3 Wertz)

4 Brianna, last name unknown, – staphylococcus infection– **Photo Exhibit N.**

5 Daniel Knight – cellulitis and staphylococcus infection of hand – **Photo Exhibit O.**

6 Steve Alioto – staphylococcus epidermitis infection

7 Jesse Mann – staphylococcus infection causing abcess on foot **Photo Exhibit P.**

8 Robbie Powelson – viral infection in throat necessitating emergency room treatment

9
10 24. Attached hereto as **Exhibit Q** is a true and correct copy of excerpts from a proposed
11 2016 Zoning Amendment City that was passed by the City Council showing that MLK
12 site was taken off the list of approved emergency homeless sheltering locations, citing
13 the existence of two elementary. Those sites deemed “feasible” include “Sausalito City
14 Hall, Public Library and **Robin Sweeny Park.**” Emphasis added. In any case last week I
15 went to MLK and was informed by a city employee that it was closed, meaning in any
16 event, it is not available as an alternative location for campers now in contaminated
17 Marinship Park.
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19 25. Amazingly, despite the fact that Marinship camp residents have been exposed to and
20 fallen ill due to exposure to toxic substances for over five weeks, Marin County Mobile
21 Care has “[a]t the City of Sausalito’s request” discontinued the shower program “until
22 further notice.” The availability of showers was an essential component of the modified
23 preliminary injunction allowing the move to Marinship Park. Defendants are in violation
24 of the injunction on this basis, alone. Attached hereto as **Exhibit R** are true and correct
25 copies of the Notices posted by the County
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27 26. As President of the Sausalito Homeless Union, based on daily, extensive contact with
28 the Marinship Park residents, I can say without equivocation that enlargement of the

1 current injunction to include overnight camping, will allow the homeless to immediately
2 access safe locations to sleep free of contamination. All last week, on every single dasy,
3 not a single city worker was working to ready the tennis courts. Neither are the campers
4 realistically able to camp on an overcrowded parking lot where the risks of vehicular
5 traffic, vehicle exhaust, migration of waters and topsoil carrying contaminants from
6 Marinship Park all exist.

7
8 27. Similarly, the Marinship Park tennis courts, surrounded by a 12-foot cyclone fence the
9 height generally used to enclose exterior portions of jails, prisons and honor farms
10 containing convicted criminals, is not an appropriate safe site given that the courts are in
11 the same low-ground plane as the Park and the parking lot where I have observed over
12 the years, are routinely flooded with rainwater and run-off from the Park. As recently as
13 four days ago, I observed large puddles on the surface of the tennis court from overnight
14 rains. Attached hereto as **Exhibit S** is a true and correct copy of a photograph depicting
15 one of the tennis court puddles I observed on that day.

16
17 28. Such accumulations of water may not present a problem for daytime community tennis
18 players members who would ordinarily spend at most a few hours on the courts, but for
19 people living and sleeping day and night, they carry unnecessary risks. Even placing
20 tents atop wooden platforms would not eliminate the necessity of walking through the
21 unprotected surface go to the restrooms and other sections of the encampment.

22
23 29. Finally, there is the issue of trust. The City ignored our concerns and the results of our
24 sampling when they denied a problem existed or asserting that we were the ones who
25 caused such problems. The City only acted weeks after the Oct. 23-24 storm when it
26 finally sent in its own inspectors and the story broke in the local papers. All throughout
27 that time, and now with the City's refusal still to disclose with specificity to those most
28 directly impacted and to the public at large exactly what they found that made them

1 suddenly reverse course and announce the shut-down of the Park, the City showed as
2 much contempt for us as we believe it has shown the Court.

3 30. For this reason, our Union strongly urges that the City of Sausalito be held in contempt
4 and that the Court order a modified preliminary injunction that will suspend enforcement
5 of the challenged ordinances in their entirety.

6 I swear and affirm under penalty of perjury under the laws of the United States of America
7 and the State of California that the foregoing is a true and correct statement based on personal
8 knowledge and otherwise on information and belief.

9
10 Dated: December 5, 2021

/s/ Robbie Powelson

11 Executed at Sausalito, CA
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