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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 ROBBI 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,)

29 Defendants.

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

**PLAINTIFFS' REPLY TO
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR ORDER TO
SHOW CAUSE WHY CITY OF
SAUSALITO SHOULD NOT BE HELD IN
CONTEMPT AND MOTION TO MODIFY
PRELIMINARY INJUNCTION**

Date: December 9, 2021

Time: 1:30 pm

Courtroom: 5-17th Floor

Courtroom: Zoom Videoconference

Judge: Hon. Edward M. Chen

STATEMENT OF FACTS

1. The City of Sausalito has failed to show cause why it should not be held in contempt of this Court's order granting the City permission to relocate homeless campers from Dunphy Park to a city-sanctioned, city-managed camp in Marinship Park. That order both expressly and impliedly required Defendants to safely relocate the camp and therein protect the safety of the relocated homeless. Even if, as Defendants may argue, they were in technical compliance, i.e., the move

1 itself, without more, was done “safely,” the City’s own documents show that it assumed a duty of
2 care that included a continuing obligation to take reasonable measures to maintain the health and
3 safety of the residents.

4 2. This included, for example, a written confirmation that before the move would be made, new
5 flushometer toilets and larger sinks would be installed in the Marinship Park restrooms, that
6 showers would be provided. (See Declarations of Robbie Powelson and Declaration of Anthony
7 Prince.) In fact, upgraded hygiene fixtures were never installed, the restrooms have not been
8 regularly maintained and cleaned, and, most significantly, the City has affirmatively increased the
9 risk of harm and actual harm to residents by disregarding concerns regarding post-storm
10 contamination in Marinship Park, refusing to disclose to encampment residents or the public at
11 large, the results of the City’s own testing and failing to provide safe, healthy, practical, alternative
12 arrangements for the campers who remain in the contaminated camp. (See Powelson Decl.)

13 3. Moreover, in defiance of this Court’s order enjoining the City from enforcing the daytime
14 camping, the City has cleared encampments during the day of persons who left Marinship Park in
15 order to avoid contamination. In some cases, Sausalito Police have cleared daytime encampments
16 and arrested campers using excessive force. (See Declarations of Robbie Powelson, Holly Wild,
17 Jeff Chase.)

18 4. Defendants’ justification for moving the encampment from Dunphy Park was entirely based
19 on what it maintained were unsafe conditions such as contaminated soil, lack of access to water and
20 the impossibility of access to mobile showers. However, the contaminated soil at Dunphy Park has
21 been completely removed and the mobile shower program at Marinship Park has been discontinued.
22 (See Powelson Decl.)

23 5. Plaintiffs Motion for OSC and to modify the PI came on the heels of the “bomb cyclone”
24 storm of October 23-24, 2021 that leveled the camp is supported by numerous declarations attesting
25 to the failure of the City to take any substantial protective measures prior to, during or after the
26 storm. Well over a month later—and after admitting through words and actions that the camp is
27 contaminated—the City has still not released the results of soil or water testing conducted weeks
28 after camp residents raised concerns. Within days following the storm that leveled Marinship

1 encampment, brackish, foul-smelling water four to six inches deep remained and, as they walked
2 and the waters penetrated to their feet, experienced physical reactions such as aggravation of
3 existing skin conditions, burning sensations and the appearance of sores.

4 6. Despite efforts by residents and community supporters to use donated wood chips and
5 planks to dry the ground and create accessible pathways, waters later confirmed to have
6 dangerously high levels of fecal coliform bacteria continued to surface and pool. Despite repeated
7 requests to do so, the City repeatedly failed to conduct any soil or water testing while disregarding
8 documented results of two consecutive lab tests that showed dangerously elevated levels of bacteria.
9 (See Declaration of Robbie Powelson.)

10 7. Finally, after ignoring lab reports provided by the residents for three weeks, the City
11 conducted its own tests and on November 19, 2021 suddenly announced via its official website that
12 residents would be moved out of Marinship Park. Newspaper stories revealed that the tests finally
13 conducted by the City showed dangerously elevated levels of fecal coliform. (See Declaration of
14 Robbie Powelson.) The City's website announced that the encampment would be closed due to
15 "concerns of the residents" with no mention that the abrupt action came not because of residents'
16 concerns—which the City had ignored for almost a month – but because the City had finally
17 performed testing and confirmed the existence of toxins in the Park. **"City admits contamination"**
18 read the headline in the Pacific Sun, "MIJ headline" (Powelson Decl.)¹

19 8. The City announced that campers would be relocated to tennis courts adjacent to the
20 encampment and, while the tennis courts were being prepared, to one half of a small parking lot
21 where it would be impossible to properly distance the tents. The City offered only three tents for use
22 on the parking lot. The REI tents offered by the City can only be anchored on a concrete or asphalt
23

24
25 ¹ The City's announcement posted on its official website November 19, 2021 reports that the relocation of campers to
26 the parking lot in advance of preparation of the tennis courts pending inspection and rehabilitation of Marinship Park
27 was "in response to concerns raised by encampment members regarding the condition of the encampment following the
28 recent storms." In fact, as discussed in detail in the Supplemental Declaration of Robbie Powelson, the concerns
regarding potential contamination were conveyed to the city within days after the storm of October 23-24, 2021. As
reported in the press and admitted by the City, it was only after the City finally conducted its own soil sampling that the
City determined that the campers had to be removed. Thus, the City's currently posted "Homeless Update" is both
inaccurate and misleading.

1 surface after six-inch deep holes have been drilled, sleeves and anchoring bolts have been installed
2 into the surface to which the tents can be tied. (See Declaration of Anthony Prince.)

3 9. In addition, misconduct and violence perpetrated by members of the Sausalito Police
4 Department has escalated and includes the use of excessive force in the arrest of Robbie Powelson,
5 Holly Wild and, most recently, Jeremy Portje, a Sausalito-based photojournalist covering homeless
6 issues in Marin County, who was the victim of an unprovoked physical police assault and false
7 arrest that resulted in serious injury to his shoulder and the extensive, visible damage to his
8 professional video camera and other equipment, which remains—along with months of footage,
9 including footage of the incident, itself -- in police custody.

10 10. In short, Defendants' Opposition to Plaintiffs' Motion for an Order to Show Cause and
11 modification of the existing preliminary injunction fails to counter the evidence showing a dramatic
12 and serious threat and actual harm to the health and safety of Marinship encampment residents.

13 ARGUMENT

14 **Defendants Ignored Residents' Concerns re Contamination and Are still failing to** 15 **provide immediate, alternative safe alternatives while taking down daytime** 16 **encampments set up by Marinship residents in uncontaminated locations.**

17 11. Although Defendants admit that enforcement of the daytime camping ban remains in effect,
18 police and other city officials have a continue to shut down encampments outside Marinship Park.
19 In every case, these campers relocated to public property on higher ground due to the unsafe
20 conditions that continue to persist well after the storm of October 23-24, 2021. In every case they
21 have either been ordered to leave or forcibly evicted during the day when they have a court-ordered
22 right to camp. There is nothing in the Modified Preliminary Injunction that makes an exception
23 permitting enforcement of the daytime camping ban against residents of Marinship Park.

24 12. In the instances described in the Declarations filed herein, residents, including named
25 plaintiffs and officers of the Homeless Union, have camped outside the park so that they can escape
26 the contamination in the Marinship Park encampment. In some cases, such as the encampment
27 established in Robin Sweeny Park directly in front of City Hall, campers have posted protest signs
28

1 and banners and engaged directly with community members such as the middle school students
2 with whom camper and Union officer Tim Logan had conversations.² Thus, in violating the Court
3 order enjoining enforcement of the daytime camping ban, Defendants have also violated their basic
4 First Amendment rights to speech and association.

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5 **Defendants have failed to provide ongoing support for the Marinship Encampment; On**
6 **the contrary, for over a month, Defendants ignored Plaintiffs' concerns regarding**
7 **contamination and have never made required upgrades to restroom**

8
9 13. The City claims that it has spent \$831,332.37 “in support of and in response to homeless
10 encampments.” However, in the most recent published report on the Fiscal Impact of costs relating
11 to homelessness, dated October 20, 2021, the City provides a total expenditure of \$675,428.51 of
12 which \$252,000.00 was spent on “Legal Department”; \$202,343.77 went to pay Salinas Police
13 Dept. Lieutenant Stacie Gregory and Chief John Rohrbacher listed as an “Encampment Allocation”
14 and \$29,099.23 for the removal of a soil stockpile in Dunphy Park. (See Prince Declaration)

15 14. This means that three-fourths of the funds expended “in support of and in response to the
16 homeless encampments” actually went to legal fees, police salaries and removal of dirt from
17 Dunphy Park *after* the homeless had been cleared out and prohibited from returning. Not listed
18 anywhere in the Fiscal Impact report is an expenditure for replacement of the flushometer toilets
19 and sinks in the men’s and women’s restrooms at Marinship Park. That is because the City failed to
20 make these upgrades despite its own “City of Sausalito Operations and Maintenance Plan for
21 Marinship Park. (See, Declarations of Robbie Powelson and Anthony Prince.)
22

23 15. The Operations and Maintenance Plan -- already in evidence as Defense Document 27-5, at
24 pg. 54 – states, “Prior to relocating the encampment to Marinship Park, the City shall complete the
25
26

27
28 ² It is noteworthy that Robin Sweeny Park was and is officially designated as a safe and sanctioned area for emergency
sheltering while the MLK Center, where two schools are located, was not and is not on the list of approved sites
published by the City of Sausalito. See, Declaration of Robbie Powelson.

1 following upgrades and/or maintenance items at the Permanent Restroom Facilities: 1. replacement
2 of plumbing fixtures including automated flushometers and larger sinks; and 2. Repaint interiors.”

3 (See Powelson Declaration)

4
5
6 16. Thus, while in its Supplemental Filing, the City now blames “saboteurs” for alleged post-
7 storm clogging of the drainage lines from the toilets, etc., Defendants were obviously well aware of
8 the limitations of the existing fixtures, which would now be used day and night by forty people
9 living in and not recreating in the park. Otherwise, the City would not have listed replacement of the
10 existing fixtures with updated new flushometers and larger sinks in its Operation and Maintenance
11 Plan. In failing to perform the upgrades or replace any of the facilities, the City breached the duty
12 of care it expressly assumed by way of the Operations and Maintenance Plan, and other express and
13 implied duties it assumed when the City chose to establish the encampment.³

14
15 17. The City has also failed to regularly and adequately comply with its own stated sanitation
16 requirements set expressly provided in the Operations and Maintenance Plan. This obligation has
17 also been disregarded as cleaning and replacement of hygiene and sanitary items has been spotty at
18 best, non-existent at worst. (See Powelson Declaration.)

19
20 **Defendants’ efforts to impose a “Code of Conduct” is an attempt to blame Plaintiffs’**
21 **alleged criminal misbehavior for the deteriorating conditions in the Marinship**
22 **encampment and justify the misconduct of the police.**

23 18. Chief John Rohrbacher’s declaration cites eight examples of “increasing criminal activity
24 by encampment residents and refers to seventy-eight (78) “calls-for-service” of which sixty-one
25 (61) allegedly related to law enforcement and seventeen (17) allegedly related to fire. According to

26
27 ³ With regard to “sabotage” or abuse of the restroom facilities, as he explains in his Declaration, Robbie Powelson
28 actually reported to the police one individual who may have been involved in such misconduct. Instead the police
officer at the scene shamed Powelson for “blaming a mentally ill woman” and refused to take any action with regard to
the offender or regarding whatever may have been done to compromise the restroom facilities. (See, Declaration of
Robbie Powelson).

1 Rohrbacher, the City responded to another 96 calls-for-service in a three-week period from October
2 21, 2021 through November 17, 2021. Yet, there are no supporting documents, no record of these or
3 any other service calls, their nature or the disposition, indications of any arrests or any other source
4 documents to support Rohrbacher's assertions.

5 19. With regard to the examples cited, none of them report that an arrest was made in any case
6 regarding a violent assault against a homeless resident. In fact, only three of Rohrbacher's eight
7 "examples" involve an alleged act of violence against a person. The remainder all involve acts of
8 the campers themselves to move from a contaminated location to safer ground or to the delivery of
9 wood chips to the encampment four days after the camp became flooded and potentially
10 contaminated. One example states that police "believe" a solar panel in Dunphy Park "was taken by
11 a resident of the encampment." There is no evidence provided that the panel was found in the
12 Marinship encampment. Moreover, Chief Rohrbacher ignores altogether that it is non-residents,
13 whether homeless or not, who may be the perpetrators of the acts or Sausalito residents hostile to
14 the homeless who are committing these acts.

15
16
17 20. Chief Rohrbacher states that the law enforcement calls have included dog bites, vandalism,
18 illegal drug use, discarded syringes, loud noise, arguments, mental health issues and welfare welfare
19 checks and unwanted persons, yet he fails to cite a single specific example of such claims or an
20 arrest made in response to such claims. The City reports that it has allocated \$185,000.00 for
21 encampment security: if crime is as rampant as Chief Rohrbacher reports, clearly whatever
22 "security" is being provided by this unidentified security contractor has failed to reduce this alleged
23 wave of violence and lawlessness.

24
25 21. In short, the City's attempt to defend itself from Plaintiffs' allegation that they are not being
26 protected fails; indeed, if anything, the lack of arrests, the ineffectiveness of its own security detail,
27 etc. demonstrate that the opposite is true. In fact, as the declarations of Robbie Powelson, Roger
28 Powelson, Holly Wild, Jeff Chase, Ken Kennedy, Tim Logan and other camp residents and

1 supporters demonstrate, it is the police, themselves, that have been the perpetrators of violence,
2 certainly against named plaintiffs, members and leaders of the Homeless Union and others who
3 have taken direct action to survive and escape a toxic environment.

4 22. With regard to the clearing of encampments outside of Marinship Park, all of Defendants'
5 exhibits depict encampments outside of Marinship Park. In each and every photograph, it is obvious
6 that it is daylight, the time during which the City has been enjoined from enforcing the daytime
7 camping ban. Nevertheless, as set forth in the Declaration of Robbie Powelson, every camp was
8 either tagged or taken down during the day, soon after they were photographed by City officials.
9

10
11 **Emilio Pineda falsely accused of making criminal threats**

12 23. The City's response to Emilio Pineda's social media posting addressed in the Supplemental
13 Declaration of John Rohrbacher, is false, sensational and designed only to mischaracterize Mr.
14 Pineda and Plaintiffs generally as a dangerous criminal mob calling for violence against City
15 officials. In fact, Mr. Pineda's social media posting was a call for a protest camp at the residence of
16 Mayor Jill Hoffman on Thanksgiving Day. At no time did Mr. Pineda call for violence or take any
17 action that could be reasonably regarded as a credible threat of violence against Mayor Hoffman.
18

19 24. Pineda's reference to "catching the turkey by the neck" may not have been the wisest choice
20 of words, but false far short of a criminal threat against a public official and in any case is protected
21 speech under the First Amendment. As Chief Rohrbacher correctly states, PC Section 6254.21(b)
22 prohibits "knowingly posting the address of an elected official intending or threatening to cause
23 imminent great bodily harm." Mr. Pineda's posting used the common alliteration "catching a turkey
24 by the neck" as the equivalent here of publicly exposing, catching "red-handed," rebuking and
25 scolding a public official by staging a tent protest at her residence.
26

27 25. In *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the Supreme Court established that speech
28 advocating illegal conduct is protected under the First Amendment unless the speech is likely

1 to incite “imminent lawless action.” In that case, the Supreme Court threw out the conviction of Ku
2 Klux Klan member Clarence Brandenburg on charges of criminal syndicalism for advocating
3 violence against Jews and African-Americans. The Court issued a new test: Advocacy could be
4 punished only “where such advocacy is directed to inciting or producing imminent lawless action
5 and is likely to incite or produce such action.”

6 26. Here, Mr. Pineda’s social media call for a Thanksgiving protest camp at the mayor’s house
7 using the metaphor of “catch a turkey by the neck” is hardly speech likely to incite imminent
8 lawless action and in any case is protected under the First Amendment.
9

10 **Defendants’ Proposed “Code of Conduct”**

11 26. Defendants’ proposed Code of Conduct includes unreasonable and ill-defined
12 unconstitutional restrictions on speech and freedom of association. The flat prohibition of “social
13 visits” within the camp is extreme given that such visits, although understandably regulated, are
14 permitted even in maximum security prisons. The prohibition of “aggressive behavior” which
15 includes unconstitutionally vague and overbroad “offensive/aggressive use of profanity” and
16 “inappropriate sexual comments” clearly violate the first amendment rights of the campers, given
17 that profanity and inappropriate sexual comments, as offensive as such speech may be, is
18 nonetheless protected. Defendants provide no compelling government purpose behind such
19 restrictions.
20

21 27. In *B.L. v. Mahanoy Area School District*, 141 S.Ct.2038 (2021), the Supreme Court only
22 weeks ago considered the suspension of a high school student who posted “fuck cheerleading, fuck
23 high school” and other profanities on social media after her application to be a cheerleader was
24 rejected. The Court ruled the speech was protected and ordered the reinstatement of the student. In
25 the seminal case of *Cohen v. California*, 403 U.S. 15 (1971), the Supreme Court ruled that the First
26 Amendment prevented the conviction of Paul Robert Cohen for the crime of disturbing the peace by
27 wearing a jacket displaying “Fuck the Draft” in the public corridors of a California courthouse. The
28

1 Court ultimately found that displaying a mere four-letter word was not sufficient justification to
2 allow states to restrict free speech and that free speech can be restricted only under severe
3 circumstances beyond offensiveness. The ruling set a precedent used in future cases concerning the
4 power of states to regulate free speech in order to maintain public civility.

5
6 28. Here, Defendants' proposed Code of Conduct similarly restricts basic First Amendment
7 rights of speech and association and suggests a punitive summary ejection from the camp with no
8 due process protections should a resident engage in protected speech. Furthermore, as Defendants
9 themselves admit by citations in the proposed Code of Conduct to various sections of the Sausalito
10 Municipal Code, there are already-existing laws and regulations that the City is already empowered
11 to enforce as necessary. However, notwithstanding the constitutional issues discussed above,
12 Plaintiffs do not object to reasonable conduct rules and urge the Court to order the parties to
13 continue to meet and confer with the assistance of Magistrate Judge Illman, as they have been, on
14 this point.
15

16 **Defendants Have Failed to Properly Investigate the Holly Wild Incident or**
17 **Undertake any Internal Investigation of Officers who refused to take her**
18 **criminal complaint against SPD employee Michael McKinley.**

19 29. Chief Rohrbacher states in his Declaration that he requested that the Sheriff's Department
20 and not the SPD conduct the criminal investigation of police department employee McKinley
21 because "[t]his is standard practice under adopted protocols to insure that the investigation is fair
22 and impartial." However, he fails to identify, cite or provide any official document setting forth this
23 "standard practice." Moreover, there is no such protocol set forth anywhere in the 600+ page
24 Sausalito Police Department Policy Manual to which he cites in other parts of his Declaration; on
25 the contrary, nowhere in the Manual is any exception provided for investigating crimes that may
26 have been committed by officers or civilian employees of the police department.
27
28

1 30. In his Declaration in Support of Defendants' Opposition to Plaintiffs' Motion, Sausalito
2 Police Chief Rohrbacher cites to Policy 1019 to justify the refusal of the Police Department to
3 initiate an internal investigation of the officers who refused to take a criminal complaint from Holly
4 Wild or Tim Logan, the eyewitness who saw and recorded civilian police department employee
5 Michael McKinley's assault on Ms. Wild.

6 31. However, there is nothing in Policy 1019 or any of its subsections that requires or permits
7 such an internal investigation to wait until, in this case, a charging decision is made by the District
8 Attorney regarding the McKinley assault. (See Declaration of Anthony Prince). On the contrary:
9 Section 1019.8 of the Manual states, in pertinent part, "When a complaint of misconduct is of a
10 serious nature, or when circumstances indicate that allowing the accused to continue to work would
11 adversely affect the mission of the Department, the Chief of Police or the authorized designee may
12 temporarily assign an accused employee to administrative leave." Although Chief Rohrbacher
13 placed civilian employee McKinley on administrative leave, he failed to do the same with Officers
14 Edgar Padilla, Nick White and others who refused to take a criminal complaint from either the
15 victim, Holly Wild or eyewitness Tim Logan. In fact, as set forth in the Declaration of Timothy
16 Logan, already in evidence, Officer Padilla, even after viewing Mr. Logan's cell phone video
17 recording of the incident, engaged in a six-minute conversation with Mr. Logan justifying the
18 McKinley attack and refusing to take a criminal complaint.

19 32. Plaintiffs view the refusal of SPD officers to take a criminal complaint under these
20 circumstances to be "misconduct of a serious nature" that "adversely affect[ed] the mission of the
21 Department." It should be obvious that taking criminal complaints when the facts show crimes have
22 been or may be committed is fundamental to the duties of a police officer and public safety. The
23 assault on Ms. Wild occurred on September 10th, but Chief Rohrbacher declares that he didn't learn
24 of the incident until five days later and then only because he was informed of it by City Attorney
25 Mary Wagner. If the City Attorney felt the incident warranted contacting the Chief of Police, why
26
27
28

1 didn't the Chief place officers on administrative leave pending internal investigation who refused to
2 take Ms. Wild's complaint in the first place?

3 33. In the "Chief's Introduction" to the Policy Manual, Mr. Rohrbacher writes, "The Sausalito
4 Police Department Policy Manual is intended as a tool to assist members of the Department,
5 individually and collectively, as we work together to promote public safety and enhance quality of
6 life through our delivery of professional police services in our community." (See Declaration of
7 Anthony Prince). The Chief also states, "While it is understood that no policy, rule, or regulation
8 can completely govern every facet of our complex and unique profession, employees must never
9 forget that in the eyes of the people we serve, the actions of each member of the Sausalito Police
10 Department reflect our character, professionalism, and integrity."

11
12 34. Here, as reported by local media, Defendants have given conflicting and inconsistent public
13 statements regarding the Holly Wild incident. (See, Declaration of Anthony Prince.) Defendant Jill
14 Hoffman, initially stating that an internal investigation of responding officers failure to take a
15 criminal complaint would begin, then pivoting to state that the investigation would not begin until
16 after the Sheriff's Department completed its criminal investigation of the McKinley assault and,
17 most recently, declaring that the internal investigation would not begin until after the Monterey
18 County District Attorney had made a charging decision in the McKinley assault.

19
20 35. Chief Rohrbacher confirms and adds a new element to the City's abdication of responsibility
21 to conduct internal investigations of police officers when he states in his declaration, "Once the City
22 receives the investigative results from the Sheriff's Department and the District Attorney, the City
23 will then retain an independent third party to conduct an internal investigation into the allegations
24 against Officers Padilla and White."

25
26 36. Plaintiffs assert that Defendants are hoping for a decision from the DA not to criminally
27 charge Michael McKinley that will allow them to sweep the misconduct of White and Padilla under
28 the rug forever. But no matter what the DA decides, the duty to take Ms. Wild's criminal complaint

1 existed and was breached. The determination as to whether a police officer engaged in serious
2 misconduct in failing, in the face of substantial evidence, to take a criminal complaint against a
3 fellow employee of the police department, as happened here, does not depend on a subsequent
4 charging decision by the DA. Furthermore, there is nothing in the 650- page SPD Policy Manual
5 that provides for delaying an internal investigation for the reasons stated by Defendants Hoffman
6 and Rohrbacher. (See, Declaration of Anthony D. Prince.)
7

8 **Subsequent to the Wild incident, Sausalito Police have engaged in repeated acts of**
9 **harassment and excessive force against campers, supporters and journalists reporting**
10 **on conditions in Marinship Park.**

11 37. As detailed in the Declarations filed in support of Plaintiffs' Motion, police are not only
12 failing to responsibly respond to calls from encampment residents but are themselves creating
13 unsafe conditions for the homeless. In addition, police are targeting Holly Wild and leading officers
14 of the Homeless Union, particularly Robbie Powelson, Tim Logan, Emilio Pineda and others. Most
15 recently, excessive force and inappropriate conduct has been shown in the arrests of Mr. Powelson
16 and Ms. Wild. Mr. Powelson was choked by Officer Thomas Georges who then made threats
17 against Mr. Powelson's father, Roger Powelson, challenging the elder Powelson to a physical fight.
18 Georges had made grossly disparaging remarks about Roger Powelson's son, Robbie, including that
19 he (Robbie) was a "disgusting person." See Declarations of Roger Powelson and Robbie Powelson.

20 38. Most recently, on December 1, 2021, police violently assaulted and arrested local
21 photojournalist Jeremy Portje when he attempted to film an encounter between police and residents
22 in the Marinship parking lot as reported in the Pacific Sun newspaper, with the headline "Sausalito
23 Police Arrest Freelance Journalist Covering Homelessness." In his Declaration filed herein, camp
24 resident and eyewitness to the incident Jeff Jacobs Chase confirms that the information contained in
25 the Pacific Sun article, is consistent with what he personally observed when police confronted
26 Portje, knocked his video camera off his shoulder and took him down using excessive force. (See,
27 Declaration of Jeff Chase).
28

1 **The City ignored plaintiffs concerns regarding fecal coliform bacteria contamination**
2 **in Marinship Park and refuses to inform residents of their own findings, while**
3 **escalating police actions against the homeless.**

4 **Defendants have therefore affirmatively increased and continue to increase the risk of**
5 **harm to the homeless residents while rendering Marinship Park in its present state**
6 **unfit for human habitation.**

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7 39. It is well-documented that for weeks, the City ignored and continues to ignore Marinship
8 Park residents' concerns and documented lab reports indicating possible toxic fecal coliform
9 contamination following the storm of October 23-24, 2021. The City also ignored laboratory reports
10 based on water samples obtained by the Homeless Union indicating dangerously excessive levels of
11 fecal coliform in the encampment. (See, Powelson Declaration). Weeks after the storm, brackish,
12 foul-smelling waters that continue to bubble up from various locations in the encampment, as well
13 as in areas near the tennis courts and the parking lot, where the City is now unsuccessfully
14 attempting to relocate the homeless.

15 40. Only after the City finally sent in its own employees and/or contractors to take and evaluate
16 soil samples did Defendants and news broke that elevated levels of fecal coliform were in the Park
17 did Defendants immediately reverse course and publicly announce its intention to clear the
18 encampment. potential contamination that Homeless Union officers provided to the City. Moreover,
19 the City failed to conduct any sampling of the brackish, foul-smelling water that continues to bubble
20 up. Robbie Powelson accompanied the city inspectors in the camp and unsuccessfully tried to
21 persuade them to test the water.

22 **Changed circumstances as grounds to modify PI.**

23 41. Defendants based their motion to modify the original preliminary injunction and cited to
24 case law for the proposition that a basis for modifying a preliminary injunction may be changed
25 circumstances. Plaintiffs herein base their current motion to modify the existing injunction on
26 drastically changed circumstances that has already caused physical harm to at least seven campers
27 and placed all residents at an increased risk of harm. Even if the court determines that the City is not
28 in contempt, changed circumstances provides a separate, alternative basis for modification of a
preliminary injunction.

Expanding Injunction to Prohibit Enforcement of the Nighttime Camping Ban is Necessary Given that Marinship Park, the Only currently sanctioned location for nighttime camping, is unfit for human habitation and the City's alternative sites are inadequate and unsafe.

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4 42. At the core of the seminal case of *Martin v. Boise* is the recognition that sleep and other
5 bodily functions are a vital and unavoidable consequence of being human. To the extent that
6 Plaintiffs have sought out and attempted to set up camp on higher ground or in any case away from
7 the contamination at Marinship Park, their actions are those of human beings trying to survive.

8 43. As he described in his declaration, John Le Blanc was the first person to leave the camp and
9 return to the higher ground of Dunphy Park on the very next day after the Oct. 23-24 storm,
10 concerned that 4 inches of brackish, likely contaminated water would aggravate his scabies, a
11 highly transmissible viral skin condition. He was ticketed during the daytime and ordered to have
12 his tent down by 3:30 pm.
13

14 44. For almost a month, disregarding evidence provided by camp residents that showed potential
15 contamination, the City did nothing to safely relocate Marinship residents. Now after finally
16 conducting its own testing, the City conceded the danger and is now unsuccessfully attempting to
17 force campers into a portion of a small parking lot and, thereafter onto tennis courts surrounded by
18 fences at least 12 feet. Both the parking lot and tennis courts sit atop the same contaminated soil in
19 the encampment. Cracks in the pavement show dirt and grass growing, a potential point of entry for
20 the toxins that now contaminated the encampment and, of course, the camp, the parking lot and the
21 tennis courts all occupy the lower ground adjacent to Richardson Bay. Should another storm cause
22 similar flooding, already existing toxins in the encampment soil could be easily and rapidly carried
23 to these unsafe "alternative" locations, thereby again exposing campers to an increased risk of harm.
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26 **CONCLUSION**


27 45. For the reasons set forth in their motions, this Reply, the supporting declarations to both and
28 what may be argued at the hearing on the motions, Plaintiffs urge the court to hold Defendants in

1 Contempt for failing to abide by the current preliminary injunction, which was based on the
2 representation that Marinship Park was a safe alternative to Dunphy Park and to enlarge the current
3 injunction to enjoin Defendants from enforcing the city-wide ban on overnight camping such that
4 they can immediately and safely relocate to uncontaminated ground.

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6 Dated: December 6, 2021

Respectfully Submitted,



Anthony D. Prince,
Attorney for Plaintiffs

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