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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

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

21 Plaintiffs,

22 v.

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

27 Defendants.
28

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

**DEFENDANTS' (1) OPPOSITION TO
PLAINTIFFS' *EX PARTE* MOTION TO
SHOW CAUSE WHY DEFENDANTS
SHOULD NOT BE HELD IN CONTEMPT
FOR VIOLATING THE PRELIMINARY
INJUNCTION, FOR SANCTIONS AND
FOR MODIFICATION OF
PRELIMINARY INJUNCTION; AND (2)
EX PARTE MOTION TO MODIFY
PRELIMINARY INJUNCTION**

Date: 9, 2021
Time: 1:30 p.m.
Courtroom: 5 – 17th Floor
Action Filed: February 16, 2021
Trial Date: T.B.D.
Judge: Hon. Edward M. Chen

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1 **I. INTRODUCTION**

2 Plaintiff's *Ex Parte* Motion to Show Cause, for Sanctions, and for Modification of
3 Preliminary Injunction ("Motion") is premised on factual misstatements and should be
4 denied in its entirety.

5 A contempt finding and sanctions are unwarranted because the City has fully
6 complied with all terms of the Court's modified preliminary injunction order, including the
7 safeguards and requirements imposed to "safely accomplish" the move to Marinship Park.
8 Plaintiffs have not identified any "specific and definite" provision of the order they believe
9 the City has violated, much less supported their claims with credible evidence or satisfied
10 the demanding legal burden for a contempt finding. *United States v. Bright*, 596 F.3d 683,
11 694 (9th Cir. 2010).

12 Plaintiffs' proposed modifications to the preliminary injunction are also
13 unwarranted because they are premised on materially false statements about police
14 misconduct and the recent storm. Contrary to the Motion:

- 15 • The Sausalito Police Department continues to respond to numerous calls-for-
16 service at the encampment, which has grown increasingly unlawful over the
17 past months.
- 18 • The City has referred the Holly Wild rock-throwing incident to the Marin
19 County Sheriff's Department and Marin County District Attorney for an
20 independent investigation, which is still ongoing, in accordance with federal
21 and state law and official policy.
- 22 • The Erin Lee Fowler incident is irrelevant to this motion because it occurred
23 in January 2020, long before the encampments were established or the Court
24 issued its preliminary injunction order, and because Plaintiffs misrepresent
25 what actually happened during the incident.
- 26 • The City made extensive efforts to support the Marinship Park encampment
27 before, during, and after the recent storm, including by preparing the
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1 encampment, offering shelter options, food and supplies, and assisting with
2 clean-up efforts.

3 The City, however, urges the Court to make two important modifications to
4 preliminary injunction. First, to address increasing criminal activity, the City asks to adopt
5 a Code of Conduct for the encampment. The City's proposed Code of Conduct is virtually
6 identical to the one already approved by the Plaintiffs and this Court in the Novato
7 homeless encampment litigation.¹ Second, in order for the City to clean and clear the
8 current encampment to make any needed repairs to the park and further investigate
9 Plaintiffs' recently stated concerns regarding potential sewage contamination resulting
10 from the recent storms, and to provide better protection against future storms, the City asks
11 to relocate the encampment to the three adjacent tennis courts. The adjacent tennis courts
12 provide sufficient space to accommodate the encampment members in accordance with
13 CDC spacing recommendations, while providing added protections against inclement
14 weather. The City's proposed modifications to the tennis courts will allow it to
15 accommodate Plaintiffs' requests to provide safe shelter during winter-storm season,
16 investigate and improve ground conditions at Marinship Park, enhance safety and security
17 within the encampment, and maintain the proximate services available at Marinship,
18 including the permanent bathrooms and mobile shower services.

19 **II. FACTUAL DEVELOPMENTS**

20 Since the parties were last before the Court, there have been several factual
21 developments bearing on their respective motions.

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27 ¹ Defendants provided Plaintiffs' counsel with a copy of the City's proposed Order
28 and Code of Conduct on November 1, 2021, but thus far have received no response
regarding its content.

1 **A. The City’s Ongoing Support For The Marinship Encampment**

2 The City has continued to provide significant material support for the Marinship
3 Park encampment, including services, housing offers, and assistance related to the recent
4 winter storm.

5 To date, the City has spent or appropriated approximately \$831,332.37 in support of
6 and in response to the homeless encampments. The City has and will continue to provide
7 support services at Marinship Park including handwashing stations, restrooms, mobile
8 showers, trash collection, and maintenance services. Zapata Decl. ¶ 2.

9 The City Council recently appropriated \$185,000 to provide 24-hour security and
10 other services at the encampment over the next six months. *Id.* ¶ 4.

11 The City has been working continually with Marin County and other public and
12 private entities to locate alternative, indoor housing for the encampment members. The
13 City coordinated with Marin County to acquire shelter beds in the New Beginnings
14 Facility in Novato. Zapata Decl. ¶ 8. The City purchased 7 beds at a subsidized rate for a
15 six-month period, which are available to four men and three women who meet certain
16 criteria. *Id.* Unfortunately, in all but one case, the encampment members have declined to
17 accept these alternative housing options. *Id.* Nevertheless, the City will continue to
18 promote, coordinate, and offer to place persons in the New Beginnings Facility. *Id.*

19 As noted in Plaintiffs’ Motion, on October 23 and 24, 2021, the City experienced a
20 serious winter storm, with heavy rains and high winds, resulting downed trees, downed
21 power lines, widespread flooding, windblown structures and fencing, and power outages
22 throughout the City, resulting in a Proclamation of Local Emergency. *Id.* ¶ 7.

23 Recognizing the threat to the encampment, the City took extensive steps to prepare the
24 encampment prior to the storm; the City secured, offered, and provided alternative
25 housing, shelter beds, and food and supplies to residents during the storm; and the City
26 continues to assist with clean-up efforts in the aftermath of the storm. *Id.* ¶ 8.

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1 **B. Increasing Criminal Activity By Encampment Residents**

2 Over the past months, the Marinship Park encampment has been the site of
3 increasing criminal activity which must be better regulated to protect the health and safety
4 of the residents and the general public.

5 Between September 10 to October 20, the City responded to 78 calls-for-service at
6 the encampment. Of those, 61 related to law enforcement and 17 related to fire.
7 Rohrbacher Decl. ¶ 5. From October 21 through November 17, 2021, the City responded
8 to an additional 96 calls-for-service at the Marinship Park encampment. Of those, 77 were
9 called-in, and the remaining calls were self-initiated foot patrols. *Id.* Law enforcement
10 calls-for-service have included an alleged sexual assault, physical fights, dog bites,
11 vandalism, illegal drug use, discarded syringes, theft, loud noise, and arguments. *Id.* ¶ 6.
12 The following is a partial list of examples.

13 On July 20, a fight between two women residing in the encampment resulted in one
14 being booked into the county jail for assault with a hammer. Both women armed
15 themselves with hammers and an elderly resident of the encampment was injured by one of
16 the women as he attempted to break up the fight. (Case No. SP21-428.) *Id.* ¶ 8.

17 On September 20, a woman residing in the encampment reported that she was
18 sexually assaulted in a tent after her drinks were spiked. The victim voluntarily left the
19 encampment and is residing in a safe location for victims of sexual assault. The Police
20 Department’s investigation is ongoing. (Case No. SP21-567.) *Id.* ¶ 9.

21 On September 25, an unknown person intentionally cut the water hose that was
22 supplying fresh water to the residents of the encampment. (Case No. SP21-579.) *Id.* ¶ 10.

23 On September 28, a woman residing in the encampment reported that a man
24 residing in the encampment used a knife to threaten her while extending an invitation for
25 companionship. (Case No. SP21-589.) *Id.* ¶ 11.

26 On October 28, the City responded to a report of fraud at the encampment. A
27 resident had falsely identified himself to a tree service company as an employee of Marin
28

1 County, and used that false identity to induce the company to deliver wood chips valued at
2 \$1,000 to the encampment. *Id.* ¶ 12.

3 On October 29 and November 1, 2021, the City responded to the construction of
4 unpermitted structures, including an unpermitted permanent residential structure in the
5 encampment, which posed health and safety concerns.² *Id.* ¶ 14.

6 On October 31, the City discovered that someone had stolen a City-owned solar
7 panel (used to power a temporary light stand) from Dunphy Park. The Police Department
8 is investigating the theft and has reason to suspect that the solar panel was taken by a
9 resident of the encampment. *Id.* ¶ 15.

10 On November 12, 2021, City staff responded to reports from the encampment of an
11 active sewage leak from the bathrooms at Marinship Park. Staff promptly responded and
12 discovered that the source of the backflow was towels tied in a plastic bag and stuffed deep
13 down the piping. McGowan Decl. ¶ 3.

14 **III. THE CITY HAS NOT VIOLATED THE PRELIMINARY INJUNCTION**
15 **AND IS NOT IN CONTEMPT**

16 The legal standard for civil contempt is demanding. Plaintiffs bear the burden of
17 proving by clear and convincing evidence that the City violated a “specific and definite”
18 order of the court, that noncompliance was not the product of a good faith or reasonable
19 interpretation of the violated order, and that noncompliance was more than technical or de
20 minimis. *United States v. Bright*, 596 F.3d 683, 694 (9th Cir. 2010); *F.T.C v. Affordable*
21 *Media*, 179 F.3d 1228, 1239 (9th Cir. 1999). That standard is not met here.

22 The Court’s modified preliminary injunction order, which is currently in effect,
23 authorized the City to relocate the encampment from Dunphy Park to Marinship Park,
24

25 ² The parties subsequently reached agreement on the unpermitted structure, so this
26 issue is not addressed further in this brief. The City notes, however, that the parties’
27 agreement was premised on the structure being used for storage of food and
28 materials, and not for human habitation. Based on a recent inspection, it appears
that Plaintiffs have not honored the agreement and that the structure is now being
used for human habitation in violation of building code requirements.

1 dependent on the City fulfilling certain conditions and safeguards. Dkt. No. 48 (Order) at
2 6. These conditions and safeguards included arranging for the safe transportation to
3 relocate individual campers to Marinship Park, providing mobile shower units and
4 conducting environmental testing at Marinship Park, and giving assurances that it would
5 not evict campers from Marinship Park. *Id.* at 2–3. The Court also continued its
6 injunction against the day-camping prohibition. *Id.* at 6.

7 The City safely relocated the encampment as authorized by the Court, and it
8 complied with all referenced conditions and safeguards. Specifically, the City arranged for
9 its consultant Urban Alchemy to provide safe transportation and relocation of individual
10 campers and their belongings; the City prepared Marinship Park for the encampment and
11 completed the promised improvements to the area and facilities, and arranged for a
12 consultant to complete environmental testing, including air and soil sampling; and the City
13 provided and continues to provide support services including handwashing stations,
14 permanent restrooms, mobile showers, and trash collection and maintenance services.
15 Zapata Decl. ¶ 2. The City has not sought to enforce the day-camping prohibition. Thus,
16 there is no violation of the Court’s modified preliminary injunction order.

17 Notably, Plaintiffs do not specify the “specific and definite” portions of the Court’s
18 order they claim were violated, nor do they offer any evidence of alleged violations.
19 Rather, Plaintiffs raise a number of new factual allegations related to police activity and
20 the recent storm at the encampment. These allegations cannot support a finding of
21 contempt because (1) they are factually inaccurate, as explained further below; and (2)
22 they are unrelated to the specific requirements of the Court’s preliminary injunction order.
23 Thus, there is no legal or factual basis for the Court to find the City in contempt or to
24 award sanctions.

25 **IV. THERE IS NO BASIS FOR PLAINTIFFS’ REQUESTED MODIFICATIONS** 26 **TO THE PRELIMINARY INJUNCTION**

27 “A party seeking modification or dissolution of an injunction bears the burden of
28 establishing that a significant change in facts or law warrants revision or dissolution of the

1 injunction.” *Sharp v. Weston*, 233 F.3d 1166, 1170 (9th Cir. 2000). Putting aside the legal
2 standards for breach of duty of care or state-created danger (which Plaintiffs fail to address
3 in their motion), Plaintiffs’ factual allegations are materially inaccurate and do not support
4 their requested modifications.

5 **A. The City Has Not Created A Danger Related To Police Activity**

6 **1. The Police Continue to Respond to Calls-For-Service**

7 Plaintiffs claim that the Sausalito Police Department is refusing to respond to calls
8 for service at the Marinship Park encampment. Motion, p. 2. This is false. The Police
9 Department continues to frequently respond to calls-for-service at the encampment.
10 Rohrbacher Decl. ¶ 5. As detailed above, during just the limited period from September
11 10 through October 20, 2021, the City responded to 78 calls-for-service at the
12 encampment, including at least 61 law enforcement matters. *Id.* Since October 20, 2021,
13 the Police Department has responded to an additional 96 calls-for-service at the Marinship
14 Park encampment. *Id.* Sausalito police officers are at the encampment on daily or near-
15 daily basis. *Id.* ¶ 4.

16 **2. The City Is Properly Investigating the Holly Wild Incident**

17 Plaintiffs claim that the City has failed to investigate allegations of police
18 misconduct made by encampment resident Holly Wild. Motion, p. 2. This contention is
19 also false.

20 On September 15, 2021, the City received a complaint of police misconduct
21 stemming from an incident at the U.S. Army Corps property located adjacent to the
22 Marinship Park encampment. Wagner Decl. ¶ 2; Rohrbacher Decl. ¶ 16. Holly Wild, an
23 encampment resident, alleged that Mike McKinley, a civilian employee of the Police
24 Department, had thrown a rock in her direction. *Id.* Ms. Wild further alleged that
25 Sausalito Police Officers Padilla and White had failed to properly take down her report
26 about the incident. Wagner Decl. ¶ 5; Rohrbacher Decl. ¶ 16.

27 The Sausalito Police Chief immediately reviewed the allegations, determined that
28 an investigation was warranted, and took appropriate personnel action in accordance with

1 applicable federal and state laws, the Sausalito Police Department Policy Manual (Policy
2 1019), and the City's ordinary practice. Rohrbacher Decl. ¶ 18.

3 First, the Police Chief immediately placed Mr. McKinley on administrative leave
4 for the duration of the investigation.

5 Second, the Police Chief requested that the Marin County Sheriff's Department
6 conduct the investigation into the potential criminal allegations against Mr. McKinley.
7 This is standard practice under adopted protocols to ensure that the investigation is fair and
8 impartial. Rohrbacher Decl. ¶ 20.

9 The Sheriff's Department agreed to the investigative request. To maintain
10 impartiality, the Sausalito Police Department will have no involvement in the Sheriff's
11 investigation. *Id.* ¶ 21. To the City's knowledge, the current status is that the Sheriff's
12 Department has completed and forwarded its criminal investigation to the District
13 Attorney's Office for review, and that the District Attorney's review is ongoing. *Id.* ¶ 22.

14 Once the City receives the investigative results from the Sheriff's Department and
15 the District Attorney, the City will then retain an independent third party to conduct an
16 internal investigation into the allegations against Officers Padilla and White. The City
17 may not take any disciplinary action against the Police Department personnel until the
18 investigations are completed. *Id.* at ¶¶ 23 – 24.

19 **3. Plaintiffs Misrepresent The Erin Lee Fowler Incident**

20 Plaintiffs claim that a police officer assaulted and used excessive force against
21 encampment resident Erin Lee Fowler in October 2021. Motion p. 2; Fowler Decl. ¶¶ 2 –
22 6. Plaintiffs' description of this incident is materially false.

23 To begin with, the incident did not occur in October 2021 as alleged, but rather on
24 January 23, 2020—long before the Dunphy Park or Marinship Park encampments had
25 been established, and long before the Court entered its preliminary injunction. Rohrbacher
26 Decl. ¶ 27. Accordingly, this incident has no relevance to the current motions and cannot
27 support a finding of contempt or a modification to the preliminary injunction.

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1 Ms. Fowler's declaration also omits or misstates other key facts about the incident.
2 Rohrbacher Decl. ¶ 26 – 30. For example, the arresting officer was Corporal Francisco
3 Padilla, not Officer Edgar Padilla as alleged. *Id.* ¶ 28. Corporal Padilla did use his taser
4 on Ms. Fowler to gain compliance, but this was because Ms. Fowler threatened to shoot
5 herself and the officers with a firearm, a fact which Plaintiffs fail to disclose. *Id.* ¶¶ 29 –
6 30. In addition, one of the two taser barbs missed Ms. Fowler, and thus no electrical
7 charge was transmitted to her. *Id.* ¶ 30.

8 The City again followed standard practices, policies, and legal requirements to
9 investigate and document the incident. *Id.* ¶ 31. The City's description of the incident is
10 supported by video, photos, an arrest report, and a use of force report. *Id.* ¶ 32. The City
11 cannot file these documents publicly due to confidentiality restrictions, but to the extent
12 allowable, the City will certainly make them available to the Court for in camera review.
13 *Id.* The City has no record of any citizen complaint filed by Ms. Fowler relating to this
14 incident. *Id.* ¶ 33.

15 **B. The City Has Not Created A Danger Related to Winter Storms**

16 Plaintiffs contend that the City created a danger by failing to protect the Marinship
17 Park encampment from the severe winter storm on October 23 and 24. This is incorrect
18 for several reasons.

19 Plaintiffs provide no evidence that Marinship Park is *uniquely* dangerous to
20 encampment residents during storms. The recent winter storm involved heavy rains and
21 high winds, resulting downed trees, downed power lines, widespread flooding, windblown
22 structures and fencing, and power outages throughout the City, prompting a Proclamation
23 of Local Emergency. *Id.* ¶ 7. This storm would have seriously damaged the outdoor
24 encampment regardless of where it was located within the City. Marinship Park did not
25 experience more significant storm damage than any other park or similar area within the
26 City. *Id.*

27 Moreover, Plaintiffs' claim that the City failed to do anything for the encampment
28 during the storm is false. As the storm approached, the City completed significant work to

1 prepare and protect the residents of the encampment, and to provide them with shelter.
2 Zapata Decl. ¶ 8. The City coordinated with the Presbyterian Church to provide and
3 distribute gravel, sleeping bags, hygiene kits, tarps, tents, and similar items to the
4 encampment residents. *Id.* On October 24, 2021, the City promoted and offered the MLK
5 Shelter to six persons remaining in the encampment, all of whom declined to be relocated.
6 *Id.* The City’s MLK Shelter remained open long after the storm passed. *Id.* It was staffed
7 by the City’s Police Department and the Parks and Recreation Department. *Id.* The City
8 further coordinated with Marin County and the Red Cross to acquire shelter beds for a
9 minimum of 20 persons on the City’s MLK shelter. *Id.* The Red Cross also provided 45
10 cots, blankets, water, and other personal hygiene items. *Id.* Following the storm, the City
11 placed large roll-off bins in the encampment to remove any debris. *Id.*

12 In addition to the steps it has already taken, the City has developed a proposal to
13 protect the encampment from future winter storms. This proposal, detailed below,
14 involves moving the residents’ tents onto the three adjacent tennis courts and providing
15 significant weather protection upgrades at the City’s expense. *Id.* ¶¶ 9 – 14. The City is
16 concurrently asking the Court to modify the preliminary injunction to authorize this
17 proposal. The City Council has already approved it and the City is ready to implement it
18 immediately. *Id.* ¶ 9.

19 **C. Plaintiffs’ Specific Requested Modifications Are Unwarranted**

20 Plaintiffs request five specific modifications to the preliminary injunction, each of
21 which is unwarranted. Plaintiffs’ Proposed Order, p. 2.

22 First, Plaintiffs ask that the Court prohibit the City from “enforcing that portion of
23 Resolution 6009 that prohibits overnight camping.” Order, ¶ 1. Plaintiffs seem to be
24 asking that they be allowed to establish overnight encampments throughout at the City at
25 locations of their choosing. In addition to the reasons discussed above, this relief is
26 unwarranted and unjustified because it would exacerbate the Covid risks previously
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1 identified by the Court and because the City’s proposal to relocate the encampment to the
2 tennis courts addresses Plaintiffs’ concerns about Marinship Park.

3 Second, Plaintiffs ask that the Court allow them to construct permanent residential
4 structures and prohibit the City from enforcing building codes and related requirements.
5 Order, ¶ 2. This requested relief is not supported by the argument in the Motion.
6 Moreover, allowing unpermitted, permanent residential construction would violate the
7 California Building Code and the Sausalito Municipal Code, pose serious health and safety
8 concerns, and result in the loss of public property. It is also unnecessary based on the
9 City’s tennis court proposal.

10 Third, Plaintiffs ask that the Court mandate that the City make certain
11 improvements to Marinship Park. Order, ¶ 3. This requested relief is not supported by the
12 argument in the Motion, and in any event, it is unnecessary based on the City’s tennis court
13 proposal.

14 Fourth and Fifth, Plaintiffs ask that the Court appoint a special master or other
15 appropriate officer to investigate the Sausalito Police Department and the incidents
16 involving Holly Wild and Erin Lee Fowler. Order, ¶¶ 4, 5. This relief is unwarranted
17 because Plaintiffs’ allegations about Erin Lee Fowler are false, and because the City has
18 already arranged for an independent investigation into the Holly Wild incident. Plaintiffs
19 also fail to cite legal authority for the appointment of a special master under the facts of
20 this case.

21 **V. THE COURT SHOULD GRANT THE CITY’S MOTION TO MODIFY THE**
22 **PRELIMINARY INJUNCTION**

23 Although Plaintiffs’ requested modifications to the preliminary injunction are
24 unwarranted, the significantly changed facts described above do warrant the City’s two
25 proposed modifications to the preliminary injunction. *Sharp v. Weston*, 233 F.3d 1166,
26 1170 (9th Cir. 2000).

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1 **A. Relocation Of The Encampment To The Adjacent Tennis Courts**

2 In response to Plaintiffs' stated concerns regarding Marinship Park's suitability to
3 withstand winter rains, including the recent contention that the prior storms caused leakage
4 contaminating the park, the City requests a modification allowing the City to relocate the
5 encampment onto the three adjacent City-owned tennis courts.

6 The tennis courts will provide much better protection against rain, wind, and other
7 inclement weather, particularly during sleeping. Zapata Decl., ¶ 10. In particular, the
8 tennis courts already have a hard, improved surface, so they will not be prone to flooding,
9 pooling water, or becoming muddy during rain events. *Id.*

10 The City has also agreed to make a number of improvements to further improve the
11 tennis courts for the encampment. The City will purchase or construct platforms for each
12 tent, modeled on a similar hardscape urban village encampment in San Francisco, which
13 will keep the tents off the ground and dry during rain events. *Id.* ¶ 11. The platforms will
14 include hardware that enables the residents to securely attach their existing tents. *Id.* The
15 City has also agreed to purchase new stake-less tents and provide them free of cost to any
16 residents who want them. *Id.* To ensure safe and easy access, the City will install
17 additional entrances to the tennis courts, and the Fire Marshall will provide a safety
18 inspection. *Id.* ¶ 12.

19 The City has also completed an analysis showing that the relocation proposal is
20 operationally and logistically feasible. The City has prepared a diagram for the
21 encampment showing that the tennis courts have enough space to accommodate all
22 existing residents of the encampment. Zapata Decl. ¶ 13, Ex. B. The tennis courts are also
23 immediately adjacent to the parking lot, permanent restrooms, and mobile showers
24 currently used by the encampment, so there will be no loss of services. *Id.* ¶ 14.

25 Finally, relocating the encampment will allow the City to clean the existing
26 encampment, further investigate recent reports of flooding and potential contamination in
27 the encampment, and thereafter make repairs or improvements as warranted.

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1 **B. Adoption Of A Standard Code of Conduct For The Encampment**

2 Given the increasing incidents of crime and other health and safety risks at the
3 encampment described above, it is imperative that the encampment be better regulated.
4 Therefore, the City also requests that the Court modify the preliminary injunction to adopt
5 the City’s proposed Code of Conduct for the encampment. Friedman Decl., Ex E.

6 The City’s proposed Code of Conduct is modeled on the one stipulated to by the
7 Plaintiffs and adopted by the Court in the Novato encampment litigation, so it should not
8 be objectionable. The City’s Code materially differs from the Novato Code solely by the
9 addition of Paragraph 3, subsections h (prohibiting damage to the encampment’s privacy
10 fence) and I (prohibiting conduct that constitutes a nuisance), and paragraph 4, subsection
11 d (prohibiting construction or assemblage of any permanent structures that would require
12 a permit or which are unauthorized to construct or assemble on city property or which
13 constitutes a public nuisance or threat to public health or safety.) (*Compare* Friedman
14 Decl., Ex. D [Novato Order] *with* Friedman Decl., Ex. E [City’s proposal].)

15 **VI. CONCLUSION**

16 For these reasons, the City respectfully requests that the Court (1) deny Plaintiffs’
17 Motion in its entirety; and (2) grant Defendants’ Motion to Modify the Preliminary
18 Injunction to (i) authorize the City to relocate the encampment to the three tennis courts at
19 Marinship Park and (ii) adopt the City’s proposed Code of Conduct to regulate unlawful,
20 unsafe and belligerent conduct at the encampment.

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