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ROHRBACHER, MARCIA RAINES, KENT BASSO

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

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

22 Plaintiffs,

23 v.

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

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

**DECLARATION OF JOHN ROHRBACHER  
IN SUPPORT OF 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 OF  
PRELIMINARY INJUNCTION**

Date: December 9, 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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**DECLARATION OF JOHN ROHRBACHER**

I, John Rohrbacher, declare as follows:

1. I am the Chief of Police for the City of Sausalito and have held that position since January 2016. If called as a witness, I could and would competently testify to all facts stated herein based upon my personal knowledge except where stated upon information and belief. This Declaration is submitted in support of 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 for Modification of Preliminary Injunction.

2. Prior to serving as Chief of Police for the City of Sausalito, I served as Police Captain for the City of Sausalito from approximately 2009 to 2016 and as an investigator at the Marin County District Attorney’s Office from approximately 2006 to 2009. Before that, I spent approximately 27 years at the City of San Rafael Police Department, including a 15-month term as Police Chief.

3. I have personal knowledge of the events stated herein as I have debriefed with my Departmental staff on these incidents, reviewed relevant City of Sausalito Police Department's records regarding these events and communicated with other witnesses to the events and/or conditions described herein.

**Criminal Activity and Law Enforcement Calls for Service**

4. The Marinship Park encampment has become the site of significant criminal activity, Municipal Code violations, and health and safety concerns. The Police Department continues to frequently respond to calls-for-service at the encampment and its officers are present there on a daily or near-daily basis.

5. From September 10 through October 20, 2021, the City responded to 78 calls-for-service at the Marinship Park encampment. Of those, 61 related to law enforcement and 17 related to fire. From October 21 through November 17, 2021, the City responded to an additional 96 calls-for-service at the Marinship Park encampment. Of those, 77 were called-in, and the remaining calls were self-initiated foot patrols.

1           6.       The law enforcement calls have included a sexual assault, physical fights, dog  
2 bites, vandalism, illegal drug use, discarded syringes, theft, loud noise, arguments, mental health  
3 issues and welfare checks, and unwanted persons.

4           7.       The following paragraphs describe a sample of recent law enforcement incidents at  
5 the Marinship Park encampment.

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

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

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

16          11.      On September 28, a woman residing in the encampment reported that a man  
17 residing in the encampment used a knife to threaten her while extending an invitation for  
18 companionship. (Case No. SP21-589.)

19          12.      On October 28, the City responded to a report of fraud at the encampment. A  
20 resident had falsely identified himself to a tree service company as an employee of Marin County,  
21 and used that false identity to induce the company to deliver wood chips valued at \$1,000 to the  
22 encampment.

23          13.      On October 29, the City discovered that a new tent had been pitched in Dunphy  
24 Park, despite the City's closure of Dunphy Park to overnight camping and the Court's previous  
25 order authorizing the relocation of the encampment to Marinship Park.

26          14.      On October 29 and November 1, the City responded to the construction of  
27 unpermitted structures, including an unpermitted permanent residential structure in the  
28 encampment, which posed serious health and safety concerns.

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

5                   **The Holly Wild Incident and Subsequent Investigations**

6           16.     On or about September 15, 2021, City Attorney Mary Wagner informed me of a  
7 complaint about an incident at the U.S. Army Corps property located adjacent to the Marinship  
8 Park encampment. Holly Wild, an encampment resident, alleged that Mike McKinley, a civilian  
9 employee of the Police Department, had thrown a rock in her direction. Ms. Wild further alleged  
10 that Sausalito Police Officers Padilla and White had failed to properly take down her report about  
11 the incident.

12           17.     Mr. McKinley is a civilian staff member of the Police Department, not a sworn  
13 police officer, and he is not permitted to carry a firearm. Officers Padilla and White are sworn  
14 police officers.

15           18.     I immediately reviewed the allegations, determined that an investigation was  
16 warranted, and took appropriate personnel action in accordance with applicable federal and state  
17 laws, the Sausalito Police Department Policy Manual (Policy 1019), and the City's ordinary  
18 practice.

19           19.     First, I immediately placed Mr. McKinley on administrative leave for the duration  
20 of the investigation.

21           20.     Second, I requested that the Marin County Sheriff's Department conduct the  
22 investigation into the potential criminal allegations against Mr. McKinley. This is standard  
23 practice under adopted protocols to ensure that the investigation is fair and impartial.

24           21.     The Sheriff's Department agreed to the investigative request. To maintain  
25 impartiality, the Sausalito Police Department will have no involvement in the Sheriff's  
26 investigation.

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1           22.     On information and belief, the Sheriff’s Department has completed and forwarded  
2 its criminal investigation to the District Attorney’s Office for review. On information and belief,  
3 the District Attorney’s review is ongoing.

4           23.     Once the City receives the investigative results from the Sheriff’s Department and  
5 the District Attorney, the City will then retain an independent third party to conduct an internal  
6 investigation into the allegations against Officers Padilla and White.

7           24.     By law, the City may not take any disciplinary action against the Police  
8 Department personnel until the investigations are completed.

9                   **The Erin Lee Fowler Incident**

10           25.     I have reviewed the Declaration of Erin Lee Fowler submitted in support of  
11 Plaintiffs’ Ex Parte Motion, in which she claims that Sausalito Police Officer Edgar Padilla used  
12 excessive force while placing her under arrest in October 2021.

13           26.     Ms. Fowler’s declaration misstates the facts of the incident.

14           27.     The incident and arrest did not occur in mid-October 2021, but rather on January  
15 23, 2020, prior to the establishment of the Dunphy Park and Marinship Park encampments.

16           28.     The arresting officer was Corporal Francisco Padilla, not Officer Edgar Padilla as  
17 alleged by Ms. Fowler.

18           29.     Ms. Fowler omits key portions of the incident, including that she told Corporal  
19 Padilla that she had a gun and was going to shoot the police officers and herself.

20           30.     During the incident, Corporal Padilla did use his taser on Ms. Fowler to gain  
21 compliance. However, one of the two taser barbs missed Ms. Fowler, and thus no electrical  
22 charge was transmitted to her. Ms. Fowler was taken to the hospital for removal of the taser barb.

23           31.     The City again followed standard practices, policies, and legal requirements to  
24 investigate and document the incident.

25           32.     Evidence documenting the incident includes an iPhone video, an arrest report, a use  
26 of force report, and a hospital report and photos. The City cannot publicly disclose these materials  
27 in this proceeding due to confidentiality laws and internal policies, but if the Court desires, it may  
28 be possible for the City to submit these materials for review in chambers.

