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Attorneys for Plaintiffs

UNITED STATES COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs

vs.

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

Defendants.

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

**PLAINTIFFS' *EX PARTE* MOTION FOR
 ORDER TO SHOW CAUSE WHY
 DEFENDANTS SHOULD NOT BE HELD
 IN CONTEMPT, FOR SANCTIONS AND
 FOR MODIFICATION OF
 PRELIMINARY INJUNCTION;
 DECLARATIONS OF: HOLLY WILD,
 TIM LOGAN, JAMES LE BLANC, ERIN
 LEE FOWLER, DANIEL EGGINK, KEN
 KENNEDY and RUDY WYATT;
 DECLARATION OF COUNSEL;
 [Proposed] ORDER FOR MODIFICATION
 OF PRELIMINARY INJUNCTION**

INTRODUCTION AND FACTS

**Police Attacks on Holly Wild and Erin Lee Fowler; Police refusal to answer calls from
 Marinship Park residents.**

The City of Sausalito is failing to protect the homeless residents of the Marinship Park
 encampment and has affirmatively acted to increase the harm and risk of harm to Plaintiffs.

Residents, including two females, Holly Wild and Erin Lee Fowler, have been assaulted by uniformed and at least one civilian employee of the police department. The assault which involved civilian police employee Michael McKinley throwing a large rock at Marinship resident Holly Wild was filmed via cell-phone video by eyewitness Timothy Logan and viewed by police who conceded the rock was thrown and could have struck Holly Wild as it went through a four-inch gap between fence sections. Responding officers Edgar Padilla and Nick White refused to take make a report and Officer Padilla was subsequently recorded by eyewitness Logan as he (Padilla) justified McKiley's attack. See Declarations of Timothy Logan and Holly Wild. The City has refused to suspend, reassign or even begin an internal investigation of Padilla and White although, bowing to community outrage and media coverage, McKinley was placed on administrative leave but Padilla and White remain on duty and harassed campers including assault eyewitness Timothy Logan.

2 Other incidents of police misconduct as detailed in the Declarations filed herein have created fear in the encampment as police are now refusing to answer calls for assistance from campers or, when they are present, are engaging in gross misconduct including excessive force. See Declaration of Erin Lee Fowler.

City's Failure to Protect Campers from The "Bomb Cyclone" Storm that flattened the camp; City's post-storm affirmative acts and omissions constitute a State-Created Danger

3. On October 23, 2021, the entire encampment was flattened during the recent "bomb cyclone" storm, described in detail in the accompanying declarations.

4. The City utterly failed before and during the storm to protect residents, with whom they have a special relationship and a duty to keep safe. In the aftermath not only has the City failed to do anything to assist the restoration of the camp, address the issue of flooding and contamination or provide replacement tents, Defendants have actually punished residents and affirmatively increased the risk of harm by preventing Plaintiffs from engaging in self-protection, including an official

1 announcement that it intends tomorrow morning, November 5, 2021, to demolish a shed built by a
2 volunteer building tradesman after the storm, used to protect donated food, blankets and clothing
3 from the winter rains.

4 5. Due to the urgency of the situation, rather than provide a recitation or paraphrasing of the
5 facts providing the basis for the relief sought, the Court is respectfully requested to carefully review
6 the detailed declarations and exhibits filed herein as they constitute the best presentation of the
7 facts.
8

9 ARGUMENT

10 6. On May 26, 2021, this Court granted Defendants' motion to modify the existing Preliminary
11 Injunction enjoining the City of Sausalito from clearing the Dunphy Park homeless encampment
12 and from enforcing its recently enacted city-wide ban on daytime camping. Plaintiffs opposed the
13 proposed modification, which would have and ultimately did permit the City to relocate the Dunphy
14 Park encampment to a city-sanctioned encampment in Marinship Park.
15

16 7. Focusing on dangers presented by the boat crushing operation immediately adjacent to the
17 section of Marinship Park in which the camp would be located, Plaintiffs opposed the motion to
18 modify but as the Court determined, following an evidentiary hearing, were not able to carry their
19 burden to show that the Marinship Park encampment would be unsafe.

20 8. However, in granting Defendants' motion, this Court expressly provided in its order that the
21 move to Marinship Park had to be "safely accomplished" and that its ruling was "dependent on the
22 City's "fulfilling all other [safety and health] conditions and safeguards" described in the Court
23 order." Essentially, Defendants represented that Marinship Park would be a safer location for those
24 who were, at the time of the issuance of the Preliminary Injunction, encamped at Dunphy Park.
25

26 9. Now, as described in detail below and in the numerous declarations attached hereto in
27 support of Plaintiffs' motion, the acts and omissions of Defendant City of Sausalito, Defendants
28 have altered the situation in the Marinship Park encampment such that, without significant

1 modifications to the Preliminary Injunction, the Marinship encampment has become unsafe and
2 dangerous for its homeless residents. Accordingly, Plaintiffs hereby bring this Ex Parte motion for
3 an Order to Show Cause why Defendants should not be held in contempt, and for Modification of
4 the Preliminary Injunction.

6 **LEGAL STANDARD FOR CONTEMPT**

7 10. A civil contempt order is proper where the alleged contemnor (1) “violated [a] court order,
8 (2) beyond substantial compliance, (3) not based on a good faith and reasonable interpretation of the
9 order, (4) by clear and convincing evidence.” *Labor/Cnty. Strategy Ctr. v. Los Angeles Cty. Metro.*
10 *Transp. Auth.*, 564 F.3d 1115, 1123 (9th Cir. 2009) (citing *In re Dual-Deck Video Cassette*
11 *Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993)). The “moving party has the burden of
12 showing by clear and convincing evidence that the contemnors violated a specific and definite order
13 of the court. “The contempt ‘need not be willful,’ and there is no good faith exception to the
14 requirement of obedience to a court order.” *Dual-Deck*, 10 F.3d at 695. A district court has “wide
15 latitude in determining whether there has been a contemptuous defiance of its order.” *Gifford v.*
16 *Heckler*, 741 F.2d 263, 266 (9th Cir. 1984). III.

17
18 11. Here, as set forth in detail in the Declarations filed herein, Defendants actions are
19 contemptuous of the Court’s order, based as it was, essentially, that Marinship Park would be a
20 safer location than Dunphy Park. Since “[d]istrict courts have broad equitable power to order
21 appropriate relief in civil contempt proceedings.” *SEC v. Hickey*, 322 F.3d 1123, 1128 (9th Cir.
22 2003) this Court is urged to find Defendants in contempt and to impose sanctions and provide relief
23 as set forth in Plaintiffs’ Proposed Order for Modification.
24

26 **THE PRELIMINARY INJUNCTION SHOULD BE MODIFIED**

27 12. It is well-settled that a Preliminary Injunction can be modified based on changed conditions.
28 The Marinship encampment, as presently constituted is no longer safe. More storms will come and

1 with them, more flooding and destruction. Campers have been and will be unable to safely remain
2 there and will have left the Park which was the only exception to the still standing ban on
3 nighttime camping.

4
5 13. We ask the Court to extend the injunction prohibiting enforcement of the ban on daytime
6 camping and now enjoin Defendants from enforcing the night camping ban which remains in force
7 per Resolution 6009. We ask the Court to enjoin the City from interfering with efforts of the
8 campers to better protect their individual campsites and themselves and permit them, as well as their
9 supporters to construct more more protective structures for campers and materials donated to
10 campers so long as they increase and do not decrease safety.

11
12 14. We ask the Court to find that the continuing failure of the city to provide alternative indoor
13 rooms prevents the City from enforcing the ordinance under *Martin v. Boise* as Judge England in
14 the Eastern District recently ruled in the ongoing case of *Warren v. City of Chico*.

15
16 15. We ask the Court to require the City to take immediate steps to secure the fencing, elevate
17 the height of tents and pathways above flood level and/or create a flood-diversion system,
18 immediately repair any storm-related damage to adjacent sewer lines, infrastructure etc.

19
20 16. We ask the Court to require the City to appoint a special master to investigate the conduct of
21 the Sausalito Police Department, and, particularly the acts of Officers Edgar Padilla and Nick White
22 in the incidents described in Plaintiffs' motion; the City's handing off of Holly Wild's criminal
23 complaint to the Marin County Sheriffs Department; and the City's failure to initiate an internal
24 affairs investigation of the failure of responding Sausalito police officers Edgar Padilla and Nick
25 White to take a criminal complaint from police assault victim Holly Wild.

26
27
28 //

CONCLUSION

16. On Defendants' motion, this Court modified its original Preliminary Injunction to *permit* the City to relocate the Dunphy Park encampment to what the City contended, for a number of reasons, would be a *safer* location. The choice was the City's and in so choosing, it assumed a duty of care that has now been breached. Even if the Court finds that even if there was no duty arising from the establishment of a special relationship and a sanctioned encampment, Plaintiffs argue that the acts and omissions as regards the police and the recent storm constitute a state created danger, particularly in the case of the storm, given that it's arrival and destructive power had been predicted days before and was, therefore, a danger known to the City that it willfully disregarded.

17. Accordingly, Plaintiffs pray that an Order to Show Cause Why Defendants' Should Not Be Held in Contempt be issued and that Plaintiffs' Motion for Modification of the Preliminary Injunction now in place be granted.

Dated: November 4, 2021

Respectfully Submitted,



Anthony D. Prince,
Attorney for Plaintiffs

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individually and in their respective official
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Case No.: 3:21-cv-01143-EMC

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

DECLARATION OF TIMOTHY LOGAN

I, Timothy Logan, a plaintiff in the above-captioned case and a resident of the Marinship
Park Homeless Encampment, declare that the following is a true and correct statement based on
personal knowledge or otherwise upon information and belief which I believe to be true:

- 1
2
3
4 1. On Friday September 10, 2021, I was filming people at the Army Corps Debris Yard that is
5 adjacent to Marinship Park Encampment, pulling up a boat out of water at the Army Corps
6 Debris Yard.
- 7
8 2. I witnessed Michael McKinley, a man who I had known by face from prior engagement, and
9 who is a civilian employee of the Sausalito Police Department and the liaison between the
10 Police Department and the Richardson Bay Regional Agency at the boat crushing operation
11 located at the Army Corps of Engineers (ACOE) facility adjacent to the encampment,
12 although frequently he did not identify himself as such.
- 13
14 3. Mr. McKinley is well known for flashing a Fire Marshall's badge, and other law-
15 enforcement appearing badges, while covering the ID part of the badge with his hand and
16 representing as a police officer. In the three or four years I have lived in Richardson Bay, I
17 have had numerous encounters with him in the City of Sausalito.
- 18
19 4. I have witnessed McKinley work directly work with Curtis Havel, the port master, up until
20 Havel he retired two weeks ago, of the Richardson Bay Regional Agency (RBRA). On his
21 Linked-In Profile, McKinley lists his job as Police Department Emergency Services
22 Coordinator for the City of Sausalito.
- 23
24 5. I am unequivocally certain given my many past encounters with Michael McKinley that it
25 was he that I personally observed and cell phone recorded on September 10, 2021 grabbing
26 a rock from within the ACOE facility and throwing it through a four-inch gap in the fence
27 separating the homeless encampment at Ms. Holly Wild, a resident of the camp, who was on
28 the other side of the fence shouting because she was observing a boat containing personal
items of hers being crushed. The cell phone video that I recorded has since been published in

the Pacific Sun newspaper and provided to the City of Sausalito and the Sausalito Police Department. A true and correct original recording of the incident as well as my subsequent conversation with Sausalito Police Department Officer Padilla can be viewed at the website of the Pacific Sun Newspaper at [Sausalito Police Under Investigation for Treatment of Homeless Residents \(pacificsun.com\)](#) Attached hereto as Exhibit A is a true and correct copy of an article that appeared in the Pacific Sun newspaper entitled "Sausalito Police Under Investigation for Treatment of Homeless Residents" which also provides links to both cell phone videos. The video of McKinley's attack on Ms. Wild can also be seen here: https://youtu.be/JcCY_rE3RgY and the recording of Officer Padilla justifying the attack can be seen here: <https://youtu.be/8VqRp3h0Mcg>.

6. At no time did I ever observe Ms. Wild making any threatening gesture or taking any threatening action toward Mr. McKinley. witnessed that Holly did not ever make any threatening gesture or took any threatening action against McKinley.
7. I was able to observe Ms. Wild standing next to the chain link fence that separates a footpath next to the Marinship Park encampment from the Army Corps of Engineers boat crushing operation. On the other side of chain link fence, I observed Michael McKinley, the Sausalito Police Department liaison with the Richardson Bay Regional Agency, standing a few yards from and then walking towards a chained and padlocked section of the fence towards Ms. Wild who had her face pressed up to a four-inch gap between the padlocked fence sections. Ms. Wild was yelling at McKinley because a boat that either belonged to her or contained items that belonged to her was being crushed. Attached hereto as Exhibit B is a true and correct copy of a photograph depicting the four-inch gap between fence sections that Ms. Wild had her face pressed up against.
8. As I watched and recorded with my cell phone camera, I observed McKinley reach down and pick up a large rock. He then forcefully aimed and hurled the rock through the four-

1 inch gap towards and possibly impacting Ms. Wild's face. At no time did I ever observe
2 Ms. Wild throwing anything at Mr. McKinley or making any attempt to climb over the
3 fence or otherwise approach McKinley.

4 9. I was only able to record the first rock thrown by McKinley but learned later that he
5 threw a second rock that did not go through the fence gap.

6 10. After observing and recording Mr. McKinley as he threw the rock, I called 911. While I
7 was waiting for the 911 operator to answer, I followed McKinley, keeping in my line of
8 vision in order to be able to competently point him out to responding officers. After the
9 incident McKinley came within yards of me, wearing the same clothes, and I could see
10 without doubt that he was the man who threw the rock.

11 11. Several minutes later, Sausalito police officers Edgar Padilla and Nick White arrived. I
12 showed them the video of the incident and they acknowledged that the rock was thrown
13 in the direction of the camp, and that there was space large enough for the rock to go
14 through the fence and hit somebody.

15 12. I began recording my conversation with Officer Padilla, although I pointed my cell
16 phone down. Although he is not visible in the video, there is no doubt that other than my
17 own, the only other voice is that of Officer Padilla since I've known and have had
18 previous conversations with him when he has entered Marinship Park. Officer White
19 remained silent. See the link to the video at Exhibit A.

20 13. Over the course of a six-minute conversation – which Officer Padilla admits was also
21 recorded on his police body camera – he justified Mr. McKinley's attack on Ms. Wild
22 blaming her and explaining that anyone who yells as he she might have deserves to have
23 a rock thrown at them and suggesting that McKinley might have feared that she would
24 climb over the fence to hurt him. He further said if I had thrown a rock at Ms. Wild, I
25 wouldn't have been arrested. Both Officers refused to take a criminal report and left.
26
27
28

1 14. Shortly after this incident, I was present when Sausalito Police Lieutenant Stacey Gregor
2 and other officers including Nick White came to the park when a resident was extremely
3 upset after her boat was crushed. Officer White accosted me by the restroom and said,
4 "You misquoted me" referring to a newspaper story about Michael McKinley's attack on
5 Holly Wild in which I mentioned that both he and Officer Padilla had refused to take a
6 criminal complaint after that incident. I told him that the fact remained that neither he
7 nor Padilla ever made a report.

8
9 15. As I walked towards my car, Officer White followed me and said, "That's why I haven't
10 been out here, checking on you, because I don't want to be misquoted by you and have
11 my name dragged through the mud. I have worked hard for my career and I am not
12 going to jeopardize it." I said to him, "What do you want me to do, make a retraction?"
13 He replied, saying "Well, that would be nice, that would go a long way in my book. You
14 would look a lot better in my standings."

15
16 16. Since then, especially after the media attention to police issues at Marinship Park, and
17 even before then, I am aware that the Sausalito Police almost never respond to calls for
18 from any of the homeless in Marinship Park. I know this because I have been here since
19 the camp was relocated from Dunphy Park, I am a Homeless Union officer and I know
20 almost everyone and everything that happens in the encampment.

21 I swear under penalty of perjury under the laws of the United States and the State of
22 California that the foregoing is true and correct statement based on personal knowledge or upon
23 information and belief which I believe to be true.
24

25
26 Dated: November 1, 2021
27 Executed at Sausalito, California
28

/s/ Timothy Logan

Exhibit A



RISING TENSIONS Sausalito police officers help to clear a homeless encampment in June. Photo by Nikki Silverstein

Sausalito Police Under Investigation for Treatment of Homeless Residents

By Nikki Silverstein

Sep 28, 2021

At least two independent probes were opened this month into the treatment of local homeless residents by the Sausalito Police Department. Tensions are already high between the City of Sausalito and the residents of a homeless encampment in Marinship Park, as the parties have remained embroiled in litigation for the last seven months.

A civilian employee of the [Sausalito Police Department](#) faces an allegation of criminal misconduct against a homeless resident. The case has been referred to the Marin County Sheriff's Office for investigation, according to Sausalito Mayor Jill Hoffman. The City has also begun internal personnel investigations into the conduct of police officers. An independent investigator will be hired to oversee those investigations.

While the City of Sausalito keeps mum on the recent spate of troublesome incidents between the Sausalito Police Department and the homeless community, video evidence, letters by attorneys and interviews with victims and witnesses shed light on the questionable conduct of some police employees.

On Sept. 10, Holly Wild, 58, a then-resident of the Sausalito homeless encampment, stood at a break in the fence surrounding the Army Corps of Engineers boatyard in Sausalito. The homeless encampment is a few feet away from the boatyard, where vessels are crushed. Many mariners who once lived anchored out on Richardson Bay, including Wild, have had their boats destroyed at the boatyard. After their boats are demolished, they often move into the Sausalito homeless encampment.

Wild watched as heavy equipment destroyed a boat that she believed belonged to her. Upset and frustrated, she admits to kicking the fence and yelling, maybe even using a foul word or two.

Michael McKinley, the emergency services coordinator for the Sausalito Police Department, stood inside the boatyard. Upon hearing Wild, he approached the fence, where the two had a brief conversation. Wild claims McKinley identified himself as Curtis Havel, who is the harbormaster for the Richardson's Bay Regional Agency (RBRA), the local

government agency responsible for overseeing policy on Richardson Bay.

Without provocation, McKinley reached down, picked up a rock and hurled it at her with tremendous force, Wild said. The rock allegedly came through the several-inch gap in the fence and Wild dodged the projectile to avoid getting hit in the face by it.

“It was a five-inch-by-three-inch rock,” Wild said. “And he had good aim.”

A second rock thrown by McKinley hit the fence, according to Wild. McKinley then began to move toward the front of the boatyard.

“He told me, ‘I’m coming to get you,’” Wild said.

Fearful for her safety, Wild left the area. In fact, she no longer feels safe staying at the homeless encampment and has returned to living anchored out on Richardson Bay.

Unbeknownst to Wild and McKinley, Tim Logan, a mariner, observed the rock-throwing from the water and shot video of part of the encounter. Logan later shared the video with Wild.

Bringing the video with her as evidence, Wild twice attempted to file a report with the Sausalito Police Department about the incident. Both times the department refused to accept the report.

Logan even spoke on the phone with Sausalito police officer Nick White about taking a report from Wild. White refused and said he wasn’t going to “play any games,” according to Logan.

Attempting to report the incident himself, Logan met in-person with Sausalito police officer Edgar Padilla. Padilla

spent several minutes justifying the rock-throwing incident, according to a video Logan took of the meeting. Again, no report was taken. Instead, Padilla said the conversation was documented by his bodycam.

Eventually, on Sept. 14, Wild wrote a report and hand-delivered it to the desk of a Sausalito Police Department employee. It appears the report was finally accepted.

The following day, Anthony Prince, attorney for the California Homeless Union, and Holly Wild, wrote a strongly worded letter to the City of Sausalito's attorney and their outside counsel about the series of events. Prince said the rock-throwing incident was extremely serious, as was the officers' refusal to investigate.

"In conclusion, at this point we insist that pending a full investigation of the attack on Ms. Wild and the police department's response – or lack thereof – to the attack, that Mr. Michael McKinley as well as Officers White and Padilla be suspended and have no further contact with Marinship Park encampment residents," Prince wrote.

Mary Wagner, the City of Sausalito's attorney, replied to Prince on Sept. 17, and said McKinley had been placed on administrative leave pending investigation by the Marin County Sheriff's Office. No mention was made of suspending any officers.

The Marin County Sheriff's Office spokesperson, Sergeant Brent Schneider, said in an email that it takes all allegations of crimes very seriously, regardless of the person's employer.

McKinley, too, remained tight-lipped. He declined to discuss the events, citing the investigation by the Sheriff's Office.

These examples of the Sausalito police department personnel treating members of Sausalito's homeless

community with disrespect do not appear to be isolated incidents.

Earlier this month, Lieutenant Stacie Gregory lost her temper with Robbie Powelson, a resident of the homeless encampment. Powelson followed several feet behind Gregory as she walked through the encampment, and peppered her with questions. During the strained encounter, which Powelson captured on video, Gregory turned around, approached Powelson and stood within inches of his face.

“Get out of my face,” Gregory said, though it was she who stepped up to Powelson. “You got no reason to be talking to me right now. No reason.”

Although the mistreatment of homeless residents wasn’t part of the initial litigation between the City of Sausalito and the homeless, it will likely be a factor in the current settlement negotiations. The Sausalito Homeless Union sued the City of Sausalito in February to stop the encampment from being moved and to prevent a ban on daytime camping. The encampment was eventually moved from the downtown area to Marinship Park, yet camping is still permitted 24/7 by the homeless.

As the *Pacific Sun* went to press on Tuesday, Sept. 28, the parties are scheduled for a private settlement conference. The same night, the Sausalito City Council is scheduled to discuss a resolution to spend \$185,000 for a six-month period on security at the Marinship Park homeless encampment.

The conduct of the police staff will be discussed at the settlement conference, which is being held at Prince’s insistence. Prince maintains that the City of Sausalito has failed to make the camp safe for the residents and that there are negative psychological effects for the former anchor-out

mariners who are forced to live next to the boatyard that crushed their boats.

“It’s time for the City to settle,” Prince said. “They have abdicated their responsibility. We want the City to house people now.”

Exhibit B

Gap in fence



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DECLARATION OF HOLLY WILD

I, Holly Wild, declare as follows:

1. I was a resident of the Marinship Park encampment before Michael McKinely, a now-suspended civilian employee of the Sausalito Police Department threw two rocks at me on September 10, 2021 and Sausalito Police Officers Edgar Padilla and Nick White

1 refused to take my criminal complain, although they had seen the cell-phone video taken
2 by another camper, Tim Logan, showing the incident.

3 2. Because McKinley threatened me with more harm, I became frightened and left the
4 park. I have been staying in a motel and other safe locations ever since with assistance
5 from the Homeless Union and other community members. I only returned once to be
6 interviewed by Nikki Silverstein, a reporter for the Pacific Sun Newspaper General
7 Counsel for the California Homeless Union and attorney for the Sausalito Homeless
8 Union. Attached hereto as Exhibit A is her story, which I have read and can attest that it
9 is an accurate representation of what happened.
10

11 3. Again assisted by the Union, I finally went to the Police Station and insisted on filing a
12 report and statement, attached here as Exhibit B.

13 I swear under penalty of perjury under the laws of the United States and the State of
14 California that the foregoing is true and correct statement based on personal knowledge or upon
15 information and belief which I believe to be true.
16
17

18 Dated: November 4, 2021

19 Executed at Petaluma CA

20 _____
21 /s/ Holly Wild
22
23
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25
26
27
28

Exhibit A



RISING TENSIONS Sausalito police officers help to clear a homeless encampment in June. Photo by Nikki Silverstein

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Without provocation, McKinley reached down, picked up a rock and hurled it at her with tremendous force, Wild said. The rock allegedly came through the several-inch gap in the fence and Wild dodged the projectile to avoid getting hit in the face by it.

“It was a five-inch-by-three-inch rock,” Wild said. “And he had good aim.”

A second rock thrown by McKinley hit the fence, according to Wild. McKinley then began to move toward the front of the boatyard.

“He told me, ‘I’m coming to get you,’” Wild said.

Fearful for her safety, Wild left the area. In fact, she no longer feels safe staying at the homeless encampment and has returned to living anchored out on Richardson Bay.

Unbeknownst to Wild and McKinley, Tim Logan, a mariner, observed the rock-throwing from the water and shot video of part of the encounter. Logan later shared the video with Wild.

Bringing the video with her as evidence, Wild twice attempted to file a report with the Sausalito Police Department about the incident. Both times the department refused to accept the report.

Logan even spoke on the phone with Sausalito police officer Nick White about taking a report from Wild. White refused and said he wasn’t going to “play any games,” according to Logan.

Attempting to report the incident himself, Logan met in-person with Sausalito police officer Edgar Padilla. Padilla

spent several minutes justifying the rock-throwing incident, according to a video Logan took of the meeting. Again, no report was taken. Instead, Padilla said the conversation was documented by his bodycam.

Eventually, on Sept. 14, Wild wrote a report and hand-delivered it to the desk of a Sausalito Police Department employee. It appears the report was finally accepted.

The following day, Anthony Prince, attorney for the California Homeless Union, and Holly Wild, wrote a strongly worded letter to the City of Sausalito's attorney and their outside counsel about the series of events. Prince said the rock-throwing incident was extremely serious, as was the officers' refusal to investigate.

"In conclusion, at this point we insist that pending a full investigation of the attack on Ms. Wild and the police department's response – or lack thereof – to the attack, that Mr. Michael McKinley as well as Officers White and Padilla be suspended and have no further contact with Marinship Park encampment residents," Prince wrote.

Mary Wagner, the City of Sausalito's attorney, replied to Prince on Sept. 17, and said McKinley had been placed on administrative leave pending investigation by the Marin County Sheriff's Office. No mention was made of suspending any officers.

The Marin County Sheriff's Office spokesperson, Sergeant Brent Schneider, said in an email that it takes all allegations of crimes very seriously, regardless of the person's employer.

McKinley, too, remained tight-lipped. He declined to discuss the events, citing the investigation by the Sheriff's Office.

These examples of the Sausalito police department personnel treating members of Sausalito's homeless

community with disrespect do not appear to be isolated incidents.

Earlier this month, Lieutenant Stacie Gregory lost her temper with Robbie Powelson, a resident of the homeless encampment. Powelson followed several feet behind Gregory as she walked through the encampment, and peppered her with questions. During the strained encounter, which Powelson captured on video, Gregory turned around, approached Powelson and stood within inches of his face.

“Get out of my face,” Gregory said, though it was she who stepped up to Powelson. “You got no reason to be talking to me right now. No reason.”

Although the mistreatment of homeless residents wasn’t part of the initial litigation between the City of Sausalito and the homeless, it will likely be a factor in the current settlement negotiations. The Sausalito Homeless Union sued the City of Sausalito in February to stop the encampment from being moved and to prevent a ban on daytime camping. The encampment was eventually moved from the downtown area to Marinship Park, yet camping is still permitted 24/7 by the homeless.

As the *Pacific Sun* went to press on Tuesday, Sept. 28, the parties are scheduled for a private settlement conference. The same night, the Sausalito City Council is scheduled to discuss a resolution to spend \$185,000 for a six-month period on security at the Marinship Park homeless encampment.

The conduct of the police staff will be discussed at the settlement conference, which is being held at Prince’s insistence. Prince maintains that the City of Sausalito has failed to make the camp safe for the residents and that there are negative psychological effects for the former anchor-out

mariners who are forced to live next to the boatyard that crushed their boats.

“It’s time for the City to settle,” Prince said. “They have abdicated their responsibility. We want the City to house people now.”

Exhibit B

SAUSALITO POLICE DEPARTMENT

John Rohrbacher
Chief of Police

SAUSALITO POLICE DEPARTMENT

John Rohrbacher
Chief of Police

CITIZEN'S COMPLAINT

NAME Holly Seifert-Wick AGE 58
 Street & Number Homeless encampment City Sausalito
 Resident Phone 628-271-8538 Business Phone Same
 Best Time to Contact ANYTIME
 Nature of Complaint ASSAULT W/ INTENT TO HARM
 Date of Occurrence 8/10/21 Day of Week FRI Time _____
 Location of Incident(s) US ARMY CORP OF ENG

Police Employee(s) Subject to Complaint

NICK WHITE, EDGAR PADILLA
LT STACIE GREGORY (MIKE MCKENNEY) THREW
ROCKS (2) DIRECTLY AT MY FACE. HAD NOT
MOVED THE 1st ROCK (5x5) WENT BETWEEN
THE EYES AND ONE HEAD RIGHT BETWEEN MY EYES
I THOUGHT WAS A WOMAN THAN THREW ANOTHER
ONE AND WENT RIGHT BETWEEN MY EYES

I affirm that the statements contained herein are, to the best of my knowledge, factual and accurate.
 I affirm that I have read the following statement.

You have the right to make a complaint against a police officer for any improper police misconduct. California law requires this agency to have a procedure to investigate citizen's complaints. You have a right to a written description of this procedure. This agency may find that after investigation, there is not enough evidence to warrant action on your complaint. Even if that is the case, you have the right to make a complaint and have it investigated if you believe an officer behaved improperly. Citizen's complaints and any reports or findings relating to complaints must be retained by this agency for at least five years. It is against the law to make a complaint that you know to be false.

Signature of Complainant

Signature of Parent/Guardian (if you are under 18 years of age)

Date

Person Receiving Complaint

Date

Review by Chief of Police

Date

Assigned to:

Complaint No.

Date

September 14th, 2021

I Holly Wild, am reporting a crime that I was victim of on September 10th, 2021 in Sausalito.

On the day in question, I was standing outside of the fence of the Army Corps of Engineers Debris Yard. I was shouting at a man who was destroying a boat "Who do you think you are!" because the people at the Army Corps have destroyed my boat homes in the past and when I witness them crushing boats it triggers my PTSD to relive past traumas of losing all of my possessions.

The man walked towards me, picked up a large rock and threw it with great force directly at my face which was poking out of a gap in the fence. If I had not dodged the rock, it would have hit me and knocked me right out. It was a big rock, couple inches in diameter. He then proceeded to throw another rock at me. After he threw these two stones, he told stated "I'm coming around to get you".

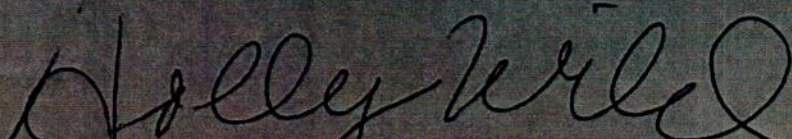
He did not come out though, but felt afraid for my safety so I left the area entirely. Later on I called the police to make a report. They wanted to see the video and I directed to them to Tim. However nothing came.

On September 14th, I called the police again to make a report. The dispatcher said that an officer would come out and meet me. The responding officer, Nick White, then apparently called the person whose phone I had used to call. He then apparently called Tim Logan and told him he would not be coming out to take a report or play any "games".

Because of this I went to the police station and tried to file a report there. Again, they refused to take my report unless I went into a backroom with them without my supporter Robbie Powelson in public view, which I was not comfortable with because I do not trust the Sausalito Police Department. Because they refused to take my report, I filed a complaint.

I am still seeking to file charges against the man who attacked me, whose name I do not know by name but have been told by Tim Logan to be Michael McKinley, an employee of the Sausalito Police Department.

I swear under penalty of perjury that the foregoing is true and correct and that I have full knowledge of what is in this declaration

A handwritten signature in black ink, appearing to read "Holly Wild", is written at the bottom of the page.

Anthony D. Prince (SBN # 202892)
General Counsel, California Homeless Union/Statewide Organizing Council
Law Offices of Anthony D. Prince
2425 Prince Street, Ste. 100
Berkeley, CA 94705
Tel: 510-301-1472

Attorneys for Plaintiffs

UNITED STATES COURT

NORTHERN DISTRICT OF CALIFORNIA

SAUSALITO/MARIN COUNTY CHAPTER
OF THE CALIFORNIA HOMELESS UNION
on behalf of itself and those it represents;
ROBBI POWELSON; SHERI I.
McGREGOR; MICHAEL ARNOLD;
ARTHUR BRUCE; MELANIE MUASOU;
SUNNY JEAN YOW; NAOMI
MONTEMAYOR; MIKE NORTH and
JACKIE CUTLER on behalf of themselves
and similarly situated homeless persons,

Plaintiffs

vs.

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

Defendants.

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

**DECLARATION OF ERIN LEE FOWLER
IN SUPPORT OF PLAINTIFFS' MOTION
FOR ORDER TO SHOW CAUSE WHY
DEFENDANTS SHOULD NOT BE HELD
IN CONTEMPT AND FOR
MODIFICATION OF PRELIMINARY
INJUNCTION**

DECLARATION OF ERIN LEE FOWLER

I, Erin Lee Fowler, declare as follows:

1. I am a resident of the Marinship Park homeless encampment. I had a boat adjacent to the encampment on which I was living until I was recently tased and forced off it by Sausalito Police Officer Edgar Padilla.

- 1 2. On or about mid-October, my boat was confiscated by since retired Richardson Bay
2 Harbormaster Curtis Havel. After it was confiscated, I came on board and tried to
3 retrieve my personal possessions, including the ashes of my deceased daughter. Within
4 ten minutes, Havel came and told me that I had to leave immediately.
- 5 3. Officer Edgar Padilla of the Sausalito Police Department arrived and told me I had only
6 one hour to get all my worldly possessions. When he returned, I had not been able to
7 retrieve and pack all the items, but Padilla said that I had to go, anyway. I explained that
8 I had two hairline fractures in my spine and that I needed more time.
- 9 4. Padilla then used some baseless accusation, misconstruing my words to make it appear
10 that I was suicidal. He and other Sausalito police jumped on my boat and immediately
11 began using a taser gun on me without justification. While Padilla continued to tase me,
12 his partner kept yelling "Padilla, she's had enough, that's enough, that's enough, that's
13 enough." Finally he stopped sending charges through the wires he had shot into me.
- 14 5. In great pain from the tasing, Padilla then roughly dragged me off the boat by my hair in
15 spite of my having forewarned them about the hairline fractures in my spine.
- 16 6. They took me to the hospital to get the taser barbs out of my legs. Then they took me to
17 jail. I was never psychiatrically evaluated. They gave me trespassing charges and
18 resisting arrest. I ended up pleading guilty of resisting arrest only because they had
19 threatened to keep me in jail. They dropped the trespassing charge.

20 I swear under penalty of perjury under the laws of the United States and the State of
21 California that the foregoing is true and correct statement based on personal knowledge or upon
22 information and belief which I believe to be true.

23 Dated: November 1, 2021

/s/ Erin Lee Fowler

24 Executed at Sausalito, California

Anthony D. Prince (SBN # 202892)
General Counsel, California Homeless Union/Statewide Organizing Council
Law Offices of Anthony D. Prince
2425 Prince Street, Ste. 100
Berkeley, CA 94705
Tel: 510-301-1472

Attorneys for Plaintiffs

UNITED STATES COURT

NORTHERN DISTRICT OF CALIFORNIA

SAUSALITO/MARIN COUNTY CHAPTER
OF THE CALIFORNIA HOMELESS UNION
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SUNNY JEAN YOW; NAOMI
MONTEMAYOR; MIKE NORTH and
JACKIE CUTLER on behalf of themselves
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Plaintiffs

vs.

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

Defendants.

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

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

DECLARATION OF KEN KENNEDY

I, Ken Kennedy, declare as follows:

1. I am a resident of the Marinship Park homeless encampment.
2. I fear for my safety at the camp because the police department refuses to protect us or take our calls for help seriously.

- 1 3. I own a dog, which is permitted here. Recently, a non-resident came to the camp with
2 her dog, which attacked me and my dog. She comes to the camp frequently. She has told
3 me that her dog has been trained to kill other dogs. On at least one previous occasion
4 after this non-resident's ran into my tent and began fighting my dog, destroying it and
5 biting my hand which bled profusely and left scars. On that occasion, I called the police
6 and when they arrived I asked to file a report. Responding Sausalito Police Officers
7 Edgar Padilla and Nick White refused to do so or to cite the non-resident owner of the
8 dog that attacked us. Instead, they told me to call the humane society, which did nothing.
9
- 10 4. On the most recent occasion, the non-resident and her dog entered the camp and
11 approached me as I was heading out to go to work. As I went to the parking lot, her dog
12 attacked viciously attacked mine. Officer Padilla was on the sidewalk and saw the whole
13 attack. I said to him, "Hey man, this is too much. We are living here in a tent and we are
14 coming out and being ambushed." I asked to press charges, but Padilla refused to even
15 file a police report and left.
16
- 17 5. When I returned to the camp after work that same day and was parking my truck, the
18 non-resident and her dog were still there. The dog lunged twice, broke free from his
19 collar and leapt out me and my dog, who had run up to greet me, but became scared and
20 went to my side. My dog got puncture wounds before I could get him out of there.
21 Officer Padilla, who was present, witnessed the entire incident. He did absolutely
22 nothing and again refused to take a police report.
23
- 24 6. What happened to me is typical. Police rarely respond when we call for help and if they
25 do come to the park, they do nothing to help us. If there is an incident and they do come
26 out, they pull shotguns and service revolvers on just about everyone who they think may
27 be involved. I know this because I have witnessed it myself. We are a community here,
28 and I've heard this from many residents as well as witnessed many of these incidents

1 personally. The situation has gotten worse since the media reported the incident of Holly
2 Wild being attacked by a civilian employee of the police department near the boat
3 crushing operation. The police will not protect us and when they do show up, they
4 frequently overreact and make the situation even more dangerous.

5
6
7 I swear under penalty of perjury under the laws of the United States and the State of
8 California that the foregoing is true and correct statement based on personal knowledge or upon
9 in formation and belief which I believe to be true.
10

11 Dated: November 1, 2021

/s/Ken Kennedy

12 Executed at Sausalito, California
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