

1 LAW OFFICES OF ANTHONY D. PRINCE  
ANTHONY D. PRINCE, Cal Bar. No. 202892  
2 General Counsel, California Homeless Union/Statewide Organizing Council  
2425 Prince Street, Ste. 100  
3 Berkeley, CA 94705  
4 Telephone: 510-301-1472

5 Attorney for Plaintiffs

6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA

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

14 Plaintiffs,

15 v.

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

20 Defendants.

Case Number: 3:21-cv-01143-LB

**PLAINTIFFS' CASE MANAGEMENT  
STATEMENT & [PROPOSED] ORDER**

**Judge:** Hon. Judge Edward M. Chen  
**Dept.:** Courtroom 5 – 17th Floor

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22 Plaintiffs in the above-entitled action submit this JOINT CASE MANAGEMENT  
23 STATEMENT & PROPOSED ORDER pursuant to the [Standing Order for All Judges of the](#)  
24 [Northern District of California](#) and [Civil Local Rule 16-9](#).

25 1. Jurisdiction & Service

26 This Court has subject matter jurisdiction over Plaintiffs' claims in this case pursuant to 28  
27 U.S.C. §§ 1331 and 1343 because Plaintiffs allege violations of 42 U.S.C. § 1983 and raise  
28 questions of federal constitutional law under the Eighth, Fourth and Fourteenth Amendments. No

1 issues exist regarding *persona* jurisdiction or venue, since the events giving rising to this action  
2 occurred in Marin County. By agreement between the parties, Sausalito filed its answer to the  
3 Complaint on March 22, 2021.

4 2. Facts

5 On or around December 28, 2020, one individual set up camping gear in an area east of Dunphy  
6 Park in Sausalito, California. The encampment area is located on Humboldt Avenue, just  
7 north/northeast of 300 Locust Street (“Dunphy Park Encampment”). As of February 16, 2021,  
8 there were about twenty people with camping gear in the Dunphy Park Encampment and it is  
9 believed that the number of campers has grown since that date.

- 10
- 11 • On February 5, 2021, the Sausalito City Council approved two resolutions regarding  
12 homelessness in the City and the encampment at Dunphy Park (Resolutions Nos. 6008 and  
13 6009). Per Resolution No. 6009 (the resolution at issue), the City Council prohibited all  
14 daytime camping within City limits. In addition, the City Council prohibited all overnight  
15 camping, “except for area(s) of Marinship Park designated by the Interim City Manager or  
16 her designee . . . by persons who have no option to sleep indoors, pending further action by  
17 the City Council.” Under Resolution No. 6009, overnight camping at Marinship Park is  
18 permitted, but day camping is not: “All persons camping overnight must remove all  
19 camping facilities and personal property from Marinship Park between the hours of thirty  
20 (30) minutes after sunrise to thirty (30) minutes before sunset.” Resolution No. 6009 was  
21 modified by the meeting minutes to specify that individuals would not be moved from Dunphy  
22 Park to Marinship Park until reasonable storage facilities, such as storage lockers, were in  
23 place at Marinship Park.
  - 24 • On February 9, 2021, the Police Department posted Notices to Vacate around the Dunphy  
25 Park Encampment. The Notices to Vacate stated, in relevant part, that the Public Works  
26 Department would clear and close the Encampment Area on February 16, 2021,  
27 conditioned on the availability of storage at Marinship Park and directing all persons to  
28 vacate the site and remove any personal belongings by that time.
  - Prior to the noticed clean and clear of the encampment of Dunphy Park on February 16,  
2021, six storage units (with two separate enclosed storage lockers per unit, for 12 storage  
lockers total) were placed in Marinship Park for the daytime storage of personal  
belongings necessary for overnight camping for individuals who choose to camp overnight  
at Marinship Park.
  - On February 16, 2021, the Police Department and Public Works Department tried to clear  
and close the Dunphy Park Encampment. The Departments spoke with encampment  
members and the public for about two hours. After doing so, it was determined that  
clearing and closing the Dunphy Park Encampment would not be feasible that day.

- 1 • On February 23, 2021, this Court held an expedited hearing on Plaintiffs’ *Ex Parte*  
2 Application and Motion for Preliminary Injunction.
- 3 • On March 1, 2021, this Court issued an Order granting Plaintiffs’ motion for a preliminary  
4 injunction and enjoining Defendants from (1) enforcing the day camping prohibition in  
5 Resolution No. 6009 and (2) closing and/or clearing the Dunphy Park encampment  
6 (“Order”).
- 7 • The Order, however, further states that as for (2) noted above, “[t]he Court does not  
8 preclude Defendants from filing a motion to modify or dissolve that specific preliminary  
9 injunctive relief if, e.g., they demonstrate that there are no toxic risks at the proposed  
10 encampment site at Marinship Park and that the move can be safely accomplished.”

11 ***Plaintiffs’ Statement of Principal Factual Issues in Dispute:***

12 Plaintiffs assert that Marinship Park is not an appropriate location to which current  
13 residents of the Dunphy Park encampment should be forced to go due to risk of exposure to  
14 fiberglass dust, (considered by the State of California to be a potential carcinogen) and other  
15 airborne toxins generated by the Army Corps of Engineers Boat crushing operation. Plaintiffs  
16 dispute the findings of Monte Deignan & Associates, Defendants’ consultant regarding such  
17 hazards, since the air sampling conducted on March 11, 2021 was negligently performed with  
18 methods not designed to detect such toxins nor differentiate between fiberglass and other fibers.  
19 Plaintiffs retained EMSL Analytical, Inc. which prepared a report explaining why Defendants’  
20 consultants’ report has failed to show that in this regard that Marinship Park is safe.

21 Also, as shown in Plaintiffs’ Opposition to Modify the Preliminary Injunction, significant  
22 psychological stress and mental health harm may result from persons who became homeless  
23 because their boats were previously seized and destroyed having to live right next to ongoing boat  
24 crushing operations. In addition, assertions that Dunphy Park is not an appropriate location for the  
25 current encampment and challenge misrepresentations such as lack of access to restrooms,  
26 overcrowding, lack of available water, electrical, sanitary and other infrastructure.

27 As regards the Court’s Order enjoining enforcement of Resolution 6009, Plaintiffs dispute  
28 the City’s non-contextual and erroneous interpretation of the holding in *Martin v. Boise*.

Plaintiffs also assert that Defendants have failed to produce a single document or declaration  
from the alleged owner of the private property on which a portion of the Dunphy Park camp now

1 sits requesting the City to remove the campers. In fact, the only document produced by Defendants  
2 suggests that the owner was only going along and authorizing a prior determination by the City  
3 that the campers were going to be removed.

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5 3. Legal Issues

6 ***Plaintiffs' Statement of Principal Legal Issues in Dispute:***

7 Plaintiffs argue that enforcement of Resolution No. 6009 with respect to its ban of daytime  
8 overnight camping violates the substantive due process rights of individuals and other rights under  
9 federal and state law and that enforcement of Resolution No. 6009 with respect to its limitation on  
10 overnight camping also violates the substantive due process among other state and federal rights  
11 belonging to Plaintiffs. Plaintiffs also alleged that Defendants have failed to rebut evidence of  
12 foreseeable state-created danger by way of breaking up encampments, compelling the homeless to  
13 wander during the day and thereby be at increased risk of exposure to and community spread of  
14 COVID-19 and variants known to now exist in California. In addition, Plaintiffs raise the legal  
15 issue that relocation to Marinship Park and the potential physiological and psychological risks to  
16 which they would be exposed therein are another basis for state-created danger, i.e., affirmative  
17 acts by Defendants that will increase the risk of harm.

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19 4. Motions

20 Plaintiffs' Motion for an Order to Show why Defendants Should Not Be Found in  
21 Contempt of the Preliminary Injunction for the police raid of March 25, 2021 is on for hearing on  
22 April 29, 2021. Defendants' motion for Modification of the Preliminary Injunction is also on for  
23 hearing on April 29, 2021. Plaintiffs also expect to file a motion requesting the court to permit the  
24 taking of testimony from witnesses regarding the Parties' respective motions.

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27 5. Amendment of Pleadings

28 Not applicable at this time.

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6. Evidence Preservation

The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information (“ESI Guidelines”) and confirm that they have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action.

7. Disclosures

The Parties have not yet filed their respective initial disclosure pursuant to Fed. R. Civ. P. 26 and including their lists of witnesses and descriptions of categories of documents, electronically stored information, and tangible things that it has, or may have, in its possession, custody, or control and may use to support its claims or defenses.

8. Discovery

No discovery has been taken to date to date by either party and neither party proposes limiting or modifying the discovery rules. Both parties anticipate serving written discovery requests pursuant to the discovery rules and thereafter conducting percipient and expert depositions as necessary. The parties continue to discuss whether entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified discovery disputes makes sense for this particular matter.

9. Class Actions

Plaintiffs reserve their right to seek class certification.

10. Related Cases

There are no related cases or proceedings pending before another judge of this court, or before another court or administrative body.

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11. Relief

Plaintiffs seek relief in the form of denying Defendants’ Motion to Modify the Preliminary Injunction so as to relocate the Dunphy Park encampment to Marinship Park.

12. Settlement and ADR

The Court has ordered Settlement Discussions to take place.

13. Consent to Magistrate Judge For All Purposes

Whether **all** parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment. \_\_\_\_ YES    X NO (Plaintiffs were agreeable, however Defendants were not.)

14. Other References

The parties agree that this case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

Plaintiffs are willing to meet and confer with Defendants to attempt narrowing of the issues in this case. However, Plaintiffs believe that the key issues have been identified.

16. Expedited Trial Procedure

Plaintiffs believe that this case is suitable for expedited trial procedure given, among other things, the difficulty in maintaining contact with clients and witnesses who are homeless and, therefore, in an unstable situation regarding there whereabouts. This will be especially true if the Court modifies or dissolves the injunction as relates to enforcement of Resolution 6009.

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2 17. Scheduling

3 Should the Court grant a motion for expedited trial, Plaintiffs will submit a proposed  
4 schedule. Otherwise, Plaintiffs are in agreement with Defendants on the following dates and  
5 deadlines:

Event	Deadline/Cut-Off/Date
Initial ADR Session	June 2021
Non-Expert Discovery Cut-Off	September 17, 2021
Expert Disclosure	September 17, 2021
Rebuttal Expert Disclosure	October 8, 2021
Expert Discovery Cut-Off	October 29, 2021
Filing of Dispositive Motions	November 18, 2021
Hearing of Dispositive Motions	December 23, 2021
Joint Pretrial Conference Statement / Trial Briefs	February 15, 2022
Pre-Trial Conference	March 8, 2022 at 2:30 p.m.
Trial	April 4, 2022 at 8:30 a.m.

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16 18. Trial

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24 19. Disclosure of Non-party Interested Entities or Persons

25 Plaintiffs are not aware, at this time, of Non-party Interested Entities or Persons.

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28 20. Professional Conduct

29 All attorneys of record for the parties have reviewed the Guidelines for Professional  
30 Conduct for the Northern District of California.

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33 21. Other

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37 The parties have met and conferred and continue to discuss such other matters that may  
38 facilitate the just, speedy and inexpensive disposition of this matter.

LAW OFFICES OF ANTHONY D. PRINCE  
OFFICE OF THE GENERAL COUNSEL,  
CALIFORNIA HOMELESS UNION

By

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ANTHONY D. PRINCE  
Attorneys for Plaintiffs

**CASE MANAGEMENT ORDER**

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

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Hon. Judge Edward M. Chen