

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
2 Including Professional Corporations  
ARTHUR J. FRIEDMAN, Cal. Bar No. 160867  
3 ALEXANDER L. MERRITT, Cal. Bar No. 277864  
Four Embarcadero Center, 17th Floor  
4 San Francisco, California 94111-4109  
Telephone: 415.434.9100  
Facsimile: 415.434.3947  
5 E mail: afriedman@sheppardmullin.com  
amerritt@sheppardmullin.com  
6

7 MARY WAGNER, Cal. Bar No. 167214  
CITY ATTORNEY FOR CITY OF SAUSALITO  
Sausalito City Hall  
8 420 Litho Street  
Sausalito, CA 94965  
9 E-mail: [mwagner@sausalito.gov](mailto:mwagner@sausalito.gov)

10 Attorneys for Defendants  
CITY OF SAUSALITO, JILL JAMES HOFFMAN, JOHN  
11 ROHRBACHER, MARCIA RAINES, KENT BASSO

12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

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

21 Plaintiffs,

22 v.

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

27 Defendants.  
28

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

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

**Date:** April 29, 2021

**Time:** 1:30 p.m.

**Judge:** Hon. Judge Edward M. Chen

**Dept.:** Courtroom 5 – 17th Floor

1 Defendants CITY OF SAUSALITO; MAYOR JILL JAMES HOFFMAN; POLICE  
 2 CHIEF JOHN ROHRBACHER; CITY MANAGER MARCIA RAINES; and DEPT. OF PUBLIC  
 3 WORKS SUPERVISOR KENT BASSO (“Defendants”) submit this updated Case Management  
 4 Statement in conjunction with the Supplemental Declaration of Monte Deignan in Support of  
 5 Defendants’ Motion to Modify the Preliminary Injunction, Supplemental Declaration of John  
 6 Rohrbacher in Support of Defendants’ Motion to Modify the Preliminary Injunction, and Notice of  
 7 Errata re: Index of Exhibits in Support of Defendants’ Motion to Modify the Preliminary  
 8 Injunction.

9 1. Jurisdiction & Service

10 This Court has subject matter jurisdiction over Plaintiffs’ claims in this case pursuant to 28  
 11 U.S.C. §§ 1331 and 1343 because Plaintiffs allege violations of 42 U.S.C. § 1983 and raise  
 12 questions of federal constitutional law under the Eighth, Fourth and Fourteenth Amendments. No  
 13 issues exist regarding *persona* jurisdiction or venue, since the events giving rising to this action  
 14 occurred in Marin County. By agreement between the parties, Sausalito filed its answer to the  
 15 Complaint on March 22, 2021.

16 2. Facts

17 The following brief chronology of facts are largely undisputed by the parties:

- 18 • On or around December 28, 2020, one individual set up camping gear in an area east of  
 19 Dunphy Park in Sausalito, California. The encampment area is located on Humboldt  
 20 Avenue, just north/northeast of 300 Locust Street (“Dunphy Park Encampment”). As of  
 21 February 16, 2021, there were about twenty people with camping gear in the Dunphy Park  
 22 Encampment and it is believed that the number of campers has grown since that date.
- 23 • On February 5, 2021, the Sausalito City Council approved two resolutions regarding  
 24 homelessness in the City and the encampment at Dunphy Park (Resolutions Nos. 6008 and  
 25 6009). Per Resolution No. 6009 (the resolution at issue), the City Council prohibited all  
 26 daytime camping within City limits. In addition, the City Council prohibited all overnight  
 27 camping, “except for area(s) of Marinship Park designated by the Interim City Manager or  
 28 her designee . . . by persons who have no option to sleep indoors, pending further action by  
 the City Council.” Under Resolution No. 6009, overnight camping at Marinship Park is  
 permitted, but day camping is not: “All persons camping overnight must remove all  
 camping facilities and personal property from Marinship Park between the hours of thirty  
 (30) minutes after sunrise to thirty (30) minutes before sunset.” Resolution No. 6009 was  
 modified by the meeting minutes to specify that individuals would not be moved from

1 Dunphy Park to Marinship Park until reasonable storage facilities, such as storage lockers,  
2 were in place at Marinship Park.

- 3 • On February 9, 2021, the Police Department posted Notices to Vacate around the Dunphy  
4 Park Encampment. The Notices to Vacate stated, in relevant part, that the Public Works  
5 Department would clear and close the Encampment Area on February 16, 2021,  
6 conditioned on the availability of storage at Marinship Park and directing all persons to  
7 vacate the site and remove any personal belongings by that time.
- 8 • Prior to the noticed clean and clear of the encampment of Dunphy Park on February 16,  
9 2021, six storage units (with two separate enclosed storage lockers per unit, for 12 storage  
10 lockers total) were placed in Marinship Park for the daytime storage of personal  
11 belongings necessary for overnight camping for individuals who choose to camp overnight  
12 at Marinship Park.
- 13 • On February 16, 2021, the Police Department and Public Works Department tried to clear  
14 and close the Dunphy Park Encampment. The Departments spoke with encampment  
15 members and the public for about two hours. After doing so, it was determined that  
16 clearing and closing the Dunphy Park Encampment would not be feasible that day.
- 17 • On February 23, 2021, this Court held an expedited hearing on Plaintiffs' *Ex Parte*  
18 Application and Motion for Preliminary Injunction.
- 19 • On March 1, 2021, this Court issued an Order granting Plaintiffs' motion for a preliminary  
20 injunction and enjoining Defendants from (1) enforcing the day camping prohibition in  
21 Resolution No. 6009 and (2) closing and/or clearing the Dunphy Park encampment  
22 ("Order").
- 23 • The Order, however, further states that as for (2) noted above, "[t]he Court does not  
24 preclude Defendants from filing a motion to modify or dissolve that specific preliminary  
25 injunctive relief if, e.g., they demonstrate that there are no toxic risks at the proposed  
26 encampment site at Marinship Park and that the move can be safely accomplished."
- 27 • On April 9, 2021, Defendants filed a motion to modify the Court's Order granting a  
28 preliminary injunction to allow for relocation of the Dunphy Park encampment to  
Marinship Park.
- On April 22, 2021, County officials in coordination with Sausalito offered and provided  
the Pfizer Covid-19 vaccine at the Dunphy Park encampment site.

***Defendants' Statement of Principal Factual Issues in Dispute:***

The City of Sausalito has taken several actions to support the Dunphy Park encampment.  
The City has provided a additional portable toilets and wash station (as the permanent bathrooms  
are not conveniently located to the encampment site), provided a dumpster, and retained Urban  
Alchemy, a non-profit San Francisco based homeless support organization to lend support to the

1 encampment site three days a week. Despite these efforts, the City maintains that Marinship is a  
2 superior and safe location for relocation, as the City sets forth in its Motion to Modify the  
3 Preliminary Injunction.

4 On information and belief, Defendants allege that some of the individuals have options  
5 available to them to sleep indoors, including some individuals who are believed to have permanent  
6 housing. Under *Martin v. Boise*, 920 F.3d 584 (9<sup>th</sup> Cir. 2019), these individuals have no  
7 constitutional right to sleep or camp outdoors. Defendants dispute that Dunphy Park is a safer or  
8 more appropriate encampment area than Marinship Park. In contrast to Dunphy Park, the  
9 Marinship Park location has conveniently located male and female permanent bathrooms, and for  
10 several years has been the solely authorized and logistically feasible location for mobile showers  
11 (supported by social service workers) that service the site at least twice a week. Additionally, the  
12 Dunphy Park encampment substantially encroaches upon neighboring private property. The  
13 private property owner has informed the City of his objection to this encroachment. Moreover,  
14 Defendants dispute that there are any toxic risks at the proposed encampment site at Marinship  
15 Park, as recently confirmed by environmental testing performed during boat crushing operations  
16 near Marinship Park as discussed and presented in Defendants' Motion to Modify the Injunction.

17 3. Legal Issues

18 ***Defendants' Statement of Legal Factual Issues in Dispute:***

19 Defendants contend that (1) enforcement of Resolution No. 6009 with respect to its ban of  
20 daytime overnight camping does not violate the substantive due process rights of individuals (or  
21 any other right under federal or state law); and (2) enforcement of Resolution No. 6009 with  
22 respect to its limitation on overnight camping does not violate the substantive due process rights of  
23 individuals (or any other right under federal or state law); and (3) that Plaintiffs have not and  
24 cannot satisfy their burden of proof at trial that the "state created danger" exception to the general  
25 rule that the due process clause does not require a government to protect a plaintiff applies in this  
26 case.

27  
28

1 4. Motions

2 Plaintiffs' *Ex Parte* Application for a Temporary Restraining Order and Motion for  
3 Preliminary Injunction was heard by this Court on February 23, 2021. The Court granted the  
4 Motion for a Preliminary Injunction on March 1, 2021.

5 On March 31, 2021 (the day before the Initial Case Management Conference), Plaintiffs  
6 filed a Motion for Order to Show Cause Why Defendants Should Not Be Subject to Sanctions.  
7 The Case Management Conference was held on April 1, 2021, the Court set the following briefing  
8 schedule:

- 9 • Defendants to file an Opposition to Plaintiffs' Motion for Order to Show Cause Why  
10 Defendants Should Not Be Subject to Sanctions by April 9, 2021;
- 11 • Defendants to file their Motion for Modification of Preliminary Injunction by April 9,  
12 2021;
- 13 • Plaintiffs to file their Reply in Support of their Motion for Order to Show Cause Why  
14 Defendants Should Not Be Subject to Sanctions by April 16, 2021;
- 15 • Plaintiffs to file their Opposition to Defendants' Motion for Modification of Preliminary  
16 Injunction by April 16, 2021;
- 17 • Hearing on Plaintiffs' Motion for Order to Show Cause Why Defendants Should Not Be  
18 Subject to Sanctions and Defendants' Motion for Modification of Preliminary Injunction  
19 on April 29, 2021.

20 The Parties have thus far complied with all respective deadlines outlined above.  
21 Defendants also reserve all rights to file a Motion for Summary Judgment and/or Adjudication. No  
22 other motions are contemplated and/or pending at this time.

23 5. Amendment of Pleadings

24 Not applicable at this time.

25 6. Evidence Preservation

26 The parties have reviewed the Guidelines Relating to the Discovery of Electronically  
27 Stored Information ("ESI Guidelines"), and confirm that they have met and conferred pursuant to  
28

1 Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence  
2 relevant to the issues reasonably evident in this action.

3 7. Disclosures

4 Defendants have filed their initial disclosure pursuant to Fed. R. Civ. P. 26 and including  
5 their lists of witnesses and descriptions of categories of documents, electronically stored  
6 information, and tangible things that it has, or may have, in its possession, custody, or control and  
7 may use to support its claims or defenses. Plaintiffs to date have failed to so.

8 8. Discovery

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

15 9. Class Actions

16 Not applicable.

17 10. Related Cases

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

20 11. Relief

21 Plaintiffs have indicated that they may seek relief from the enforcement of Resolution  
22 6009 both during and possibly beyond the current pandemic. Defendants note that pandemic  
23 conditions in Marin County continue to improve as vaccines are widely distributed. Notably,  
24 vaccines were offered to members of the encampment on April 22, 2021. Defendants maintain  
25 that Plaintiffs' claims in this case must be reevaluated as conditions improve.

26  
27  
28

1 12. Settlement and ADR

2 The Court has issued set a Scheduling Conference on May 5, 2011 at 10:00 a.m to select a  
3 settlement conference date (*see* Dkt. No. 28). The settlement conference will proceed before the  
4 Hon. Magistrate Judge Robert M. Illman.

5 13. Consent to Magistrate Judge For All Purposes

6 Whether **all** parties will consent to have a magistrate judge conduct all further proceedings  
7 including trial and entry of judgment. \_\_\_ YES X NO

8 14. Other References

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

11 15. Narrowing of Issues

12 Defendants propose to narrow the factual issues by filing a Joint Stipulation of Facts and  
13 narrowing the legal issues to those presented in Section 3 above.

14 16. Expedited Trial Procedure

15 Defendants do not believe that this case is suitable for expedited trial procedure under  
16 General Order 64, Attachment A.

17 17. Scheduling

18 Defendants propose the following dates and 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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

18. Trial

As Plaintiffs solely seek equitable relief in this action, this matter will be tried by bench trial. Defendants anticipate that trial will require 1-2 days.

19. Disclosure of Non-party Interested Entities or Persons

Defendants are comprised of a governmental entity and individuals sued in their official capacity and are therefore exempt from the requirements of Civil Local Rule 3-15.

20. Professional Conduct

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

21. Other

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

Dated: April 23, 2021

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

/s/ Arthur J. Friedman

ARTHUR J. FRIEDMAN  
ALEXANDER L. MERRITT

Attorneys for Defendants  
CITY OF SAUSALITO, JILL JAMES HOFFMAN,  
JOHN ROHRBACHER, MARCIA RAINES, KENT  
BASSO



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

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO ORDERED.  
Dated:

---

Hon. Judge Edward M. Chen