- 1							
1	SHEPPARD, MULLIN, RICHTER & HAMPTO	ON LLP					
2	A Limited Liability Partnership Including Professional Corporations						
3	ARTHUR J. FRIEDMAN, Cal. Bar No. 160867 ALEXANDER L. MERRITT, Cal. Bar No. 277	864					
4	Four Embarcadero Center, 17 <sup>th</sup> Floor San Francisco, California 94111-4109						
5	Telephone: 415.434.9100 Facsimile: 415.434.3947						
6	E mail: afriedman@sheppardmullin.com amerritt@sheppardmullin.com						
7	MARY WAGNER, Cal. Bar No. 167214						
8	CITY ATTORNEY FOR CITY OF SAUSALIT Sausalito City Hall	O					
	420 Litho Street Sausalito, CA 94965						
9	E-mail: mwagner@sausalito.gov						
10	Attorneys for Defendants CITY OF SAUSALITO, JILL JAMES HOFFM	AN IOHN					
11	ROHRBACHER, MARCIA RAINES, KENT B						
12							
13	UNITED STATES						
14	NORTHERN DISTR	CICT OF CALIFO	PRNIA				
15		GAGENO 221	01110 1 D				
16	SAUSALITO/MARIN COUNTY CHAPTER OF THE CALIFORNIA HOMELESS UNION,	CASE NO. 3:21-cv-01143-LB					
17	on behalf of itself and those it represents; ROBBIE POWELSON; SHERI I. RILEY;	DECLARATION OF JAMES MALCOLM IN SUPPORT OF DEFENDANTS' MOTION TO MODIFY PRELIMINARY INJUNCTION					
18	ARTHUR BRUCE; MELANIE MUASOU;						
19	SUNNY JEAN YOW; NAOMI MONTEMAYOR; MARK JEFF; MIKE	Date: Time:	May 14, 2021 1:30 p.m.				
20	NORTH; JACKIE CUTLER and MICHAEL ARNOLD on behalf of themselves and	Courtroom:	5 – 17 <sup>th</sup> Floor				
21	similarly situated homeless persons,		T.1				
22	Plaintiffs,	Action Filed: Trial Date:	February 16, 2021 T.B.D.				
23	v.	Judge:	Hon. Judge Edward	d M. Chen			
24							
25	CITY OF SAUSALITO; MAYOR JILL JAMES HOFFMAN; POLICE CHIEF JOHN						
26	ROHRBACHER; CITY MANAGER MARCIA RAINES; DEPT. OF PUBLIC						
27							
411	WORKS SUPERVISOR KENT BASSO,						
	individually and in their respective official capacities,						
28	individually and in their respective official						

MALCOLM DECLARATION

SMRH:4820-1057-6872.1

#### 

## 

### 

## 

## 

### 

## 

### 

### 

### 

#### 

### 

### 

## 

### 

## 

### 

#### 

## 

#### 

#### **DECLARATION OF JAMES MALCOLM**

I, James Malcolm, declare as follows:

- 1. I am the Assistant Harbormaster for Richardson's Bay Regional Agency ("RBRA") and have held that position since December 2020. My duties as Assistant Harbormaster include, but are not limited to,: waterside management and preservation of the waters of Richardson Bay, enforcement and administration of rules and regulations of the RBRA, oversight and administration of RBRA vessel, activities, and contractors to include administration of the temporary anchorage, administration and oversight of vessel abatement conducted by RBRA contractors, and administration and oversight of RBRA operations conducted at the Army Corps of Engineers Debris Yard. 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 supplemental Declaration is submitted in support of Defendants' Motion for Modification of the Preliminary Injunction.
- I have personal knowledge of the events and issues stated herein, have debriefed with RBRA staff on these events and issues, and reviewed relevant RBRA records regarding these events.
- 3. On March 11, 2021, I was at the Army Corps of Engineers yard located at 2100 Bridgeway Sausalito, CA and provided access to Monte Deignan to observe the vessel abatement operations. Throughout the day, I intermittently observed the vessel abatement operations that took place. Attached hereto as **Exhibits 1(a)-1(b)** are true and correct copies of invoices relating to two of the three vessels abated that day. The invoices include photographs of the abated vessels, one of which was a fiberglass sailboat (Exhibit 1(b)).
- 4. RBRA also abated a third vessel, a small approximately seven-foot aluminum skiff which required no destruction prior to disposal and no receipt or invoice required for this disposal. Aside from receipts for contracted work, RBRA does not keep any logs or records of vessels abated.

#### Case 3:21-cv-01143-EMC Document 39 Filed 05/10/21 Page 3 of 11

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 10th day of May, 2021 in Sausalito, California. 

-3-

## EXHIBIT 1(a)

Timothy Elton Nunes dba: Tim Nunes Tracks

21000 Sir Francis Drake Blvd. Point Reyes Station, CA 94956 (707) 484-7769 cell

#### **INVOICE**

Invoice Number: 2021 - 380

Invoice Date: 03/18/2021

Bus. License Marin: 030392

**EIN** 47-1074754

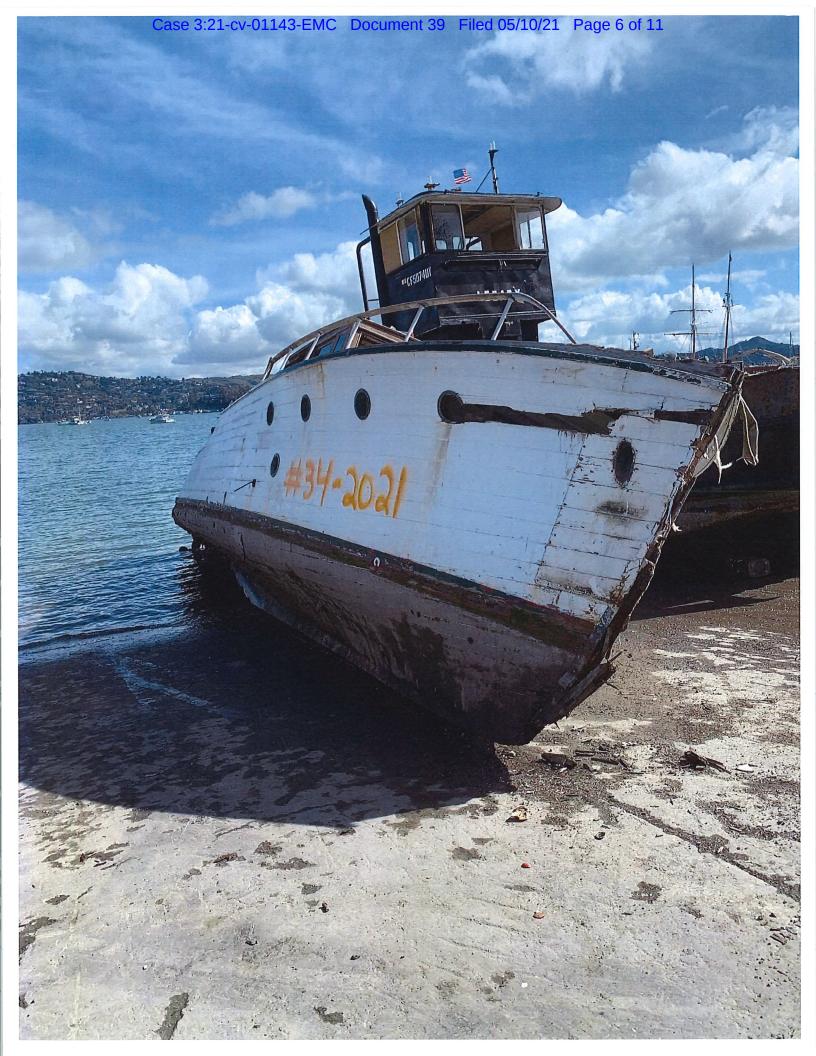
CA# 542421

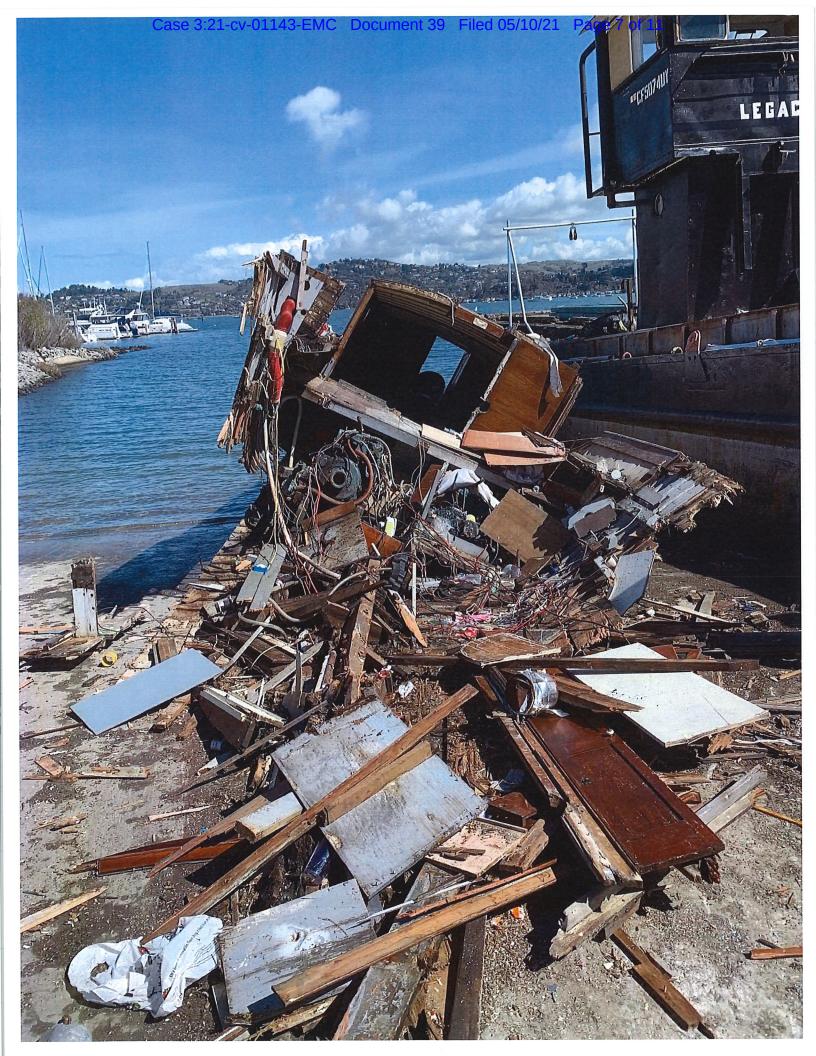
**USDOT** 3237287

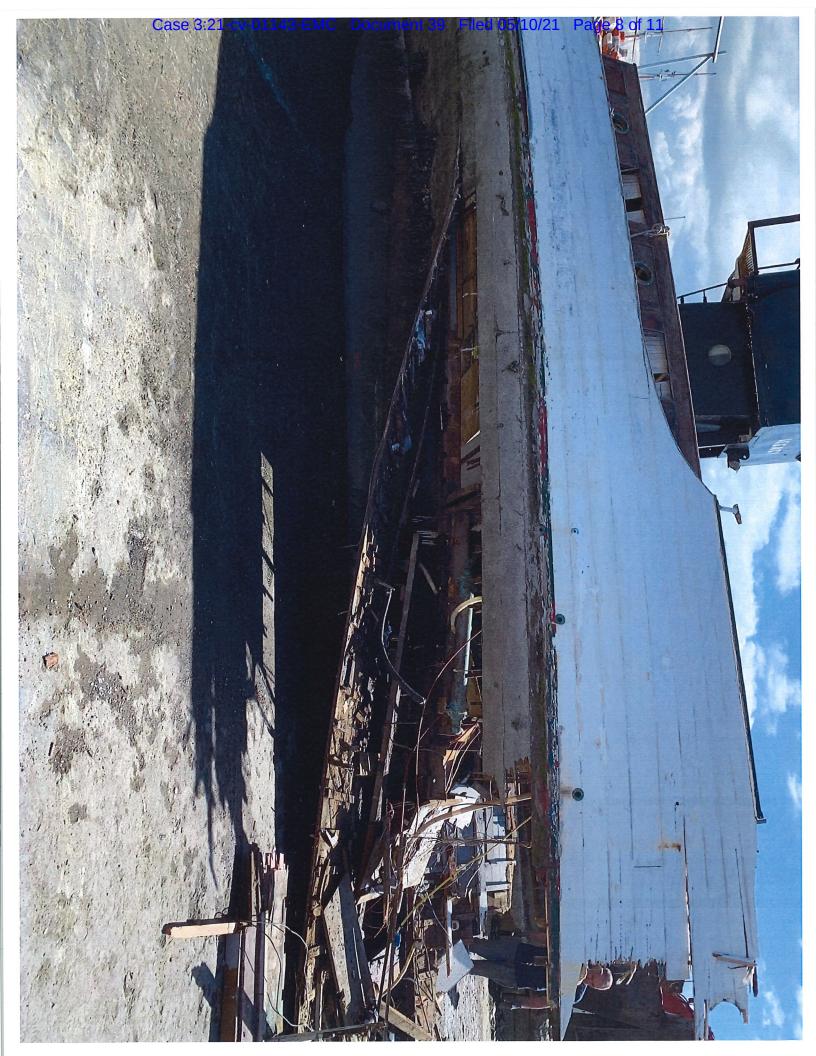
**D-U-N-S Number:** 117446186

#### **BILLING ADDRESS:** RBRA QTY DESCRIPTION Rate **AMOUNT** 03/04/2021, 03/11/2021 and 03/12/2021 Work Dates 03/04/2021 - pull up and rig Marlin 1 hour \$225.00 \$225.00 03/11/2021 – demo Marlin 8 hours \$225.00 \$1,800.00 03/12/2021 - clean up last pile of debris and pump 2.5 hours \$225.00 \$562.50 40 gallons of gas out of tanks and into tote **TOTAL** \$2,587.50

THANK YOU!	







## EXHIBIT 1(a)

# Timothy Elton Nunes dba: Tim Nunes Tracks 21000 Sir Francis Drake Blvd.

Point Reyes Station, CA 94956 (707) 484-7769 cell

### **INVOICE**

**Invoice Number: 2021 - 383** 

Invoice Date: 03/18/2021

Bus. License Marin: 030392

**EIN** 47-1074754

**CA#** 542421

**USDOT** 3237287

**D-U-N-S Number:** 117446186

BILLING ADDRESS:					
RBRA					
			· · · · · · · · · · · · · · · · · · ·		
QTY	DESCRIPTION	Rate	AMOUNT		
2 hours	03/11/2021 – demo small sailboat CF6003CY	\$225.00	\$450.00		
		TOTAL	\$450.00		

THANK YOU!	

