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11 CITY OF SAUSALITO, JILL JAMES HOFFMAN, JOHN
ROHRBACHER, MARCIA RAINES, KENT BASSO

12
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

**SUPPLEMENTAL DECLARATION OF JOHN
ROHRBACHER IN SUPPORT OF
DEFENDANTS' (1) OPPOSITION TO
PLAINTIFFS' EX PARTE MOTION; AND (2)
EX PARTE MOTION TO MODIFY
PRELIMINARY INJUNCTION**

Date: December 9, 2021
Time: 1:30 p.m.
Courtroom: 5 – 17th Floor

Action Filed: February 16, 2021
Trial Date: T.B.D.
Judge: Hon. Judge 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 and (2) *Ex Parte* Motion to Modify Preliminary Injunction.

2. 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.

City of Sausalito Police Department Policy Manual

3. The Sausalito Police Department Policy Manual prescribes the applicable procedures to investigate criminal and internal complaints involving police officers and employees, in accordance with both state and federal laws.

4. It is my responsibility to ensure that investigations are conducted properly and the Department complies with all applicable procedures to ensure that the results of either the criminal investigation or the internal investigation are not compromised.

5. Policy 1019.9 dictates the procedures applicable to criminal investigations related to personnel complaints and allows the Chief of Police to request a criminal investigation by an outside law enforcement agency. Pursuant to applicable law and Policy 1019.9, the City may not take any disciplinary action against the Police Department personnel until the investigations are completed.

6. Policy 1019.6(g)(1) describes procedures for internal investigations and requires that “administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations.” Policy 1019.6(g)(2)

1 provides that “no information or evidence administratively coerced from a member may be
2 provided to anyone involved in conducting the criminal investigation or to any prosecutor.”

3 7. To maintain impartiality and to avoid tainting a possible criminal prosecution,
4 Policy 1019.6(g)(1)-(2) and federal and state law require that any internal investigation arising out
5 of the alleged police misconduct must be postponed until after the criminal investigation has
6 concluded.

7 8. The Department’s policy and decision to commence an internal investigation
8 following the conclusion of criminal investigation in no way adversely affects the mission of the
9 Department. Investigations regarding alleged police misconduct must comply with Department
10 policies, standard practices, and applicable legal requirements to ensure full faith and confidence
11 in the Department’s manner of investigating criminal and internal complaints involving public
12 employees.

13 9. In response to the Holly Wild incident, I immediately reviewed the allegations,
14 determined that an investigation was warranted, and took appropriate personnel action in
15 accordance with applicable federal and state laws, the Sausalito Police Department Policy Manual,
16 and the City’s ordinary practice. Once the criminal investigations conclude, an independent third
17 party will conduct an internal investigation into the allegations against Mr. McKinley and Officers
18 White and Padilla.

19 **Jeremy Portje Incident and Subsequent Investigation**

20 10. On November 30, 2021, Mr. Jeremy Portje, was arrested during an incident at the
21 Marinship Park encampment by officers who were responding to an unrelated law enforcement
22 call-for-service at the encampment. Mr. Portje, who is a photojournalist, was subsequently
23 charged with two felonies and a misdemeanor: obstructing an executive officer, battery on a police
24 officer causing injury, and battery on a police officer.

25 11. This incident has been referred to the District Attorney’s office for prosecution.
26 Because of the pending criminal investigation, the City is not able to disclose further details at this
27 time. However, Plaintiffs’ characterization of the incident is factually inaccurate.
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Robbie Powelson and Holly Wild Incident

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2 12. I have reviewed the Supplemental Declaration of Robbie Powelson and the
3 Supplemental Declaration of Holly Wild submitted in support of Plaintiffs' Ex Parte Motion,
4 which claim that Sausalito Police Officers Thomas Georges and Nick White used excessive force
5 while placing Mr. Powelson and Ms. Wild under arrest.

6 13. The declarations of Mr. Powelson and Ms. Wild misstate the facts of the incident.

7 14. On Tuesday, November 23, 2021, Mr. Powelson and Ms. Wild were arrested by
8 Sergeant Thomas Georges and Officers Nick White and Sean Smagalski after interfering with the
9 lawful removal of their tents from Vina Del Mar Park (not City Hall). Mr. Powelson and Ms.
10 Wild were subsequently charged with resisting an officer. All of the other campers located at
11 Vina Del Mar Park complied without issue.

12 15. I have reviewed the officer body-worn camera footage, which does not support Mr.
13 Powelson's or Ms. Wild's statements alleging that Sergeant Thomas Georges or Officers Nick
14 White and Sean Smagalski used unnecessary force when placing either of them under arrest.

15 16. Evidence documenting the incident includes officer body-worn camera footage and
16 arrest reports. The City cannot publicly disclose these materials in this proceeding due to
17 confidentiality laws and internal policies, but if the Court desires, it may be possible for the City to
18 submit these materials for review in chambers.

19 17. The City again followed standard practices, policies, and legal requirements to
20 investigate and document the incident.

21 18. To my knowledge, there is no record of any citizen complaint filed by Mr.
22 Powelson or Ms. Wild related to this incident.

23 I declare under penalty of perjury under the laws of the United States of America that the
24 foregoing is true and correct.

25 Executed on this 8th day of December, 2021 in Sausalito, California.

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DocuSigned by:
John Rohrbacher
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John Rohrbacher

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PROOF OF SERVICE

Sausalito/Marin County Chapter Of The California Homeless Union et al. v. City Of Sausalito et al.
CASE NO. 3:21-cv-01143-LB

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Orange, State of California. My business address is 650 Town Center Drive, Tenth Floor, Costa Mesa, CA 92626.

On December 8, 2021, I served true copies of the following document(s) described as: **SUPPLEMENTAL DECLARATION OF JOHN ROHRBACHER IN SUPPORT OF DEFENDANTS’ (1) OPPOSITION TO PLAINTIFFS’ EX PARTE MOTION; AND (2) EX PARTE MOTION TO MODIFY PRELIMINARY INJUNCTION** on the interested parties in this action as follows:

Anthony David Prince
Law Offices of Anthony D. Prince
2425 Prince Street, #100
Berkeley, CA 94705
510-845-5475
princelawoffices@yahoo.com
Assigned: 02/16/2021

Attorney for Plaintiff:
California Homeless Union/Sausalito Chapter

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 8, 2021, at Costa Mesa, California.



Linda Samson