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**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

**PLAINTIFFS' REPLY TO DEFENDANT'S OPPOSITION TO TO PLAINTIFFS' *EX PARTE* APPLICATION FOR EMERGENCY TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION; DECLARATION OF DR. FLOJAUNE COFER; SUPPLEMENTAL DECLARATION OF ROBBIE POWELSON; SUPPLEMENTAL DECLARATION OF ANTHONY D. PRINCE**

Date: February 23, 2021
Time: 1:30 pm
Courtroom: Zoom Videoconference

Judge: Hon. Edward M. Chen

## INTRODUCTION AND SUMMARY OF PLAINTIFFS' REPLY

Defendants have failed to show that Plaintiffs' Application for immediate injunctive relief and the evidence, facts and sworn declarations contained therein constitute a sufficient basis for the issuance of a temporary restraining order. Defendants have not offered a single piece of evidence to rebut the greatly increased risk of harm to plaintiffs by way of separation from existing services

provided at Dunphy Park and the increase of community spread of COVID-19 as they are dispersed throughout the City during the day as required by Resolution 6009. Indeed, not only do the words "community spread" never appear anywhere in Defendants' brief, but Defendants fail to even discuss, let alone rebut official CDC and other guidance or the Plaintiffs' declarations regarding the impact of forcing Plaintiffs into the streets between dawn and dusk on a daily basis, including those who might be relocated to Marinship Park.



Defendants also fail to challenge, let alone rebut, the 9th Circuit's decision in *Alliance for Wild Rockies v. Cottrell* establishing the post-*Winter*s application of a "sliding scale" in considering the satisfaction of the "likelihood of success on the merits" element required to obtain a temporary restraining order or preliminary injunction. The sole reference in Defendant's Opposition to *Cottrel*l does not even address the "likelihood of success on the merits" prong or make any reference to the sliding scale and the permitted satisfaction of the "success" element by a showing "serious questions" exist. Defendants' cite to *Cottrell* only for the requirement of showing irreparable harm as a threshold requirement before the balancing of remaining factor can take place. While *Alliance* so holds, Defendants miss the principal holding and main and essential core of the decision, i.e., the sliding scale approach to likelihood of success on the merits and fail to rebut the increased risk of exposure to and increased community spread of a deadly virus -- which Plaintiffs clearly asserted, and for which they provided evidence in their Application.

Defendants ignore altogether the issue of community spread of the virus and instead attempt to focus the attention of the Court on the "relocation" of Plaintiffs from Dunphy Park to Marinship Park. This red herring cannot save Defendants since Plaintiffs also seek suspension of the enforcement of Resolution 6009 which forces Plaintiff and all homeless persons to walk the streets by way of a city-wide ban on camping, excepting only Marinship Park where, even there, daytime camping will be prohibited and the relocated homeless will be forced to wander the streets with all the attendant harms and increased risk of exposure to COVID-19 set forth in Plaintiffs'

Applications and supporting Declarations. (See also, attached hereto, Declaration of Dr. Flojaune Cofer, PhD MPH.

**Irreparable Harm: CDC says Homeless are "Particularly Vulnerable Group"**



At the "Frequently Asked Questions" segment of the CDC website, the following question and answer appears:

> Are people experiencing homelessness at risk of COVID-19?
>
> Because many people who are homeless are older adults or *have underlying medical conditions they may also be at increased risk for severe illness than* the general population. Health departments and healthcare facilities should be aware that people who are homeless are a particularly vulnerable group.

(See, Declaration of Dr. Flojaune Cofer and Exhibits thereto.)

In *Santa Cruz Homeless Union, et al v Martin Bernal, City of Santa Cruz, et al.*, the court addressed irreparable harm arising from the City's effort to close the San Lorenzo encampment holding, "The Ninth Circuit has held that "an alleged constitutional infringement will often alone constitute irreparable harm." *Associated Gen. Contractors of Cal., Inc. v. Coalition for Econ. Equity,* 950 F.2d 1401, 1412 (9th Cir. 1991) (citation omitted). Plaintiffs have shown the likelihood of being placed in a position of danger in violation of their substantive due process rights during the COVID-19 pandemic. Accordingly, the Court finds that Plaintiffs have demonstrated that irreparable harm will result in the absence of a preliminary injunction [.]" *Santa Cruz Homeless Union, et al. vs. Martin Bernal, et al,* (Case No. 20-cv-09425-SVK

Here, Plaintiffs have asserted violation of the right to bodily integrity under the State and Federal Constitutions and 42 U.S.C. § 1983 by way of Resolution 6009's forced dispersal of Dunphy Park and city-wide ban on camping which will compel plaintiffs and other unhoused to the risk of community spread of the deadly coronavirus as they wander

the streets of Sausalito. Indeed, while falsely asserting a "lack of accessible facilities at Dunphy Park" as the reason, Defendants nevertheless admit that homeless residents who leave Dunphy Park "are more likely to ***disperse amongst [sic] the city*** putting themselves and others ***at risk of contracting COVID-19."*** (Defendants' Opposition, at Pg. 3) This threat remains even if the majority of Sausalito residents are fully vaccinated against the coronavirus since they will nonetheless remain potential carriers of the disease. (See, Declaration of Dr. Flojaune Cofer.)

It therefore follows that if the homeless are forced out of Dunphy Park by way of enforcement of Resolution 6009 or otherwise, it will be the City's affirmative act, that will have placed plaintiffs in a situation far worse than their current status.

Defendants' Opposition, incredibly, argues that the instant case contrasts with the facts in *Bernal* as regards the number of persons in the two encampments, the provision of services by the City of Santa Cruz while here, neither Sausalito nor Marin County"has endorsed or provided services" to Dunphy Park residents. If anything, these admissions only strengthen Plaintiffs' Application and constitute admissions that not only are Defendants disregarding CDC and local guidance as regards clearing of encampments but also disregards the CDC's guidance that local government should **provide** essential services, education on COVID-19 and assistance to the resident. In addition, Defendants ignore the fact that the Dunphy Park campers are regularly supplied with food, clothing, hygiene products and other assistance as indicated in the Declaration of Robbie Powelson. (See also, Supplemental Declarations of Powelson and Prince, filed herewith.)

Finally, the fact that Dunphy Park has only 20 residents—10% of the homeless population of Santa Cruz's San Lorenzo Park—does not help Defendants but does support Plaintiffs in the area of balance of hardship/equities. With only 20 residents, in a self-contained camp, free of crime, living peacefully and, for the most part, spending most of the day and night in their individual tents,

the burden on the City, to the extent that it exists, is de minmus. The contrast is that in Bernal, the court noted and took seriously reports of crime and threats to health and safety within San Lorenzo Park, but nevertheless found, weighing these concerns against the deadly risks of exposure to COVID-19, that "the City's interest in cleaning and clearing the Encampment in San Lorenzo Park at this moment in time is outweighed by Plaintiffs' interest in their constitutional rights [to bodily integrity] during the COVID-19 pandemic."

Thus, Defendants' cynical effort to turn *Bernal* -- a case with facts very similar if not identical to those here -- on its head fails.

**Likelihood of Success on the Merits: Alliance and the "Sliding Scale" Approach Ignored by Defendants**

In *Alliance for the Wild Rockies v. Cottrell,* 632 F.3d 1127 (9th Cir. 2011) the Court found that "the 'serious questions' test remains valid post-Winter [and is important] for district courts tasked with evaluating requests for preliminary injunctions. A sliding scale approach, including the "serious questions" test, preserves the flexibility that is so essential to handling preliminary injunctions, and that is the hallmark of relief in equity."

The Court went on to explain its ruling:

> "As mentioned, the whole question of the merits comes before the court on an accelerated schedule. The parties are often mostly guessing about important factual points that go, for example, to whether a statute has been violated, whether a noncompetition agreement is even valid, or whether a patent is enforceable. In this setting, it can seem almost inimical to good judging to hazard a prediction about which side is likely to succeed. There are, of course, obvious cases. But in many, perhaps most, cases the better question to ask is whether there are serious questions going to the merits. That question has a legitimate answer. Whether plaintiffs are likely to prevail often does not." (*Alliance/Cottrell* at 1128.)

Here, as discussed more fully in the section on *Twombly*, infra, Plaintiffs have raised serious questions and, accordingly, have satisfied that part of four-point test for obtaining a TRO.

**Defendants Fail to Show How Issuing a TRO is Not in the Public Interest**

As with its treatment of the balance of equities, Defendants have not shown that issuance of a TRO would not be in the public interest. On the contrary, at P. 3 of its Opposition, Defendants state that Dunphy Park residents "dispers[ed] amongst [sic] the city [would put] themselves and others at risk of contracting COVID-19." Though the City here speculates that dispersal would result from a "lack of accessible facilities at Dunphy Park" it cannot escape its admission that once "dispersed" around the City, Dunphy park residents would be putting themselves and others at risk, or, using a term used by the CDC and every public health agency in the world -- but not Defendants -- **"community spread",** i.e., the risk arising from the clearing of homeless encampments or other actions that exile the homeless to the streets.(See, Declaration of Dr. Flojaune Cofer).

Regardless of the wording, Defendants' admission is significant and, given that Resolution 6009 essentially codifies community spread, makes even more compelling and justified Plaintiffs' request for the immediate issuance of a TRO.

**Marinship Park is Not a Suitable Alternative to Dunphy Park and Here Serves Only as a Red Herring**

Defendants devote nearly all of their Opposition on touting the benefits to Plaintiffs and the broader community of Marinship Park as an "alternative" to the Dunphy Park encampment. Not only is this proposition demonstrably false, but, of course, it is irrelevant to the issue presented: imminent and irreparable harm arising from the ban on camping of any sort, day or night, anywhere in the City of Sausalito, excepting only Marinship Park where there, too, campers would be required to break camp at sunrise and return for overnight camping only after dark.

Nevertheless, because Defendants use this fig leaf to mislead the public and, more important, try to misdirect this Court and attempt to justify closing of one encampment by the opening of another while in any case, banishing the homeless into streets from sunrise til sunset, we turn our attention to this red herring. Simply put, the state-created danger which plaintiffs seek to prevent can't be eliminated by pointing to relocation to Marinship Park as it not only does not

resolve issue of community spread or separation from services per CDC but will, on the contrary, constitute an affirmative act by the City demonstrating deliberate indifference to the imminent harm to Plaintiffs that will be caused by disregard of the CDC and Marin County's own Risk Order.



As shown in detail in the Supplemental Declarations of Robbie Powelson and Anthony D. Prince, the Marinship Park bathrooms are dirty and in disrepair, do not have soap or soap dispensers, hand sanitizer or hand sanitizer dispensers, paper towels or paper towel dispensers or any other of the most basic protections against COVID-19. All of these items *are* available in the regularly cleaned porta-potty provided by United Services or by way of self-contained hand-washing stations that have been successfully deployed in Sacramento by a joint effort of the County, City, the Sacramento Homeless Union and community volunteers. (Powelson and Prince Supplemental Declarations.)

The Mobile Shower facility at Marinship Park can also be used at or near Dunphy Park, and, in any event, is used by homeless persons all over Sausalito—including current residents of Dunphy Park -- who simply make their way to the Shower Truck by foot, bicycle and public transportation.

The Marinship Park site is directly adjacent to a boat crushing operation which produces toxic dust that migrates to the Park and poses a recognized hazard even in small dose exposures. (Prince Supplemental Declaration.) The so-called storage facilities are open to the elements, the contents therein visible to the public and at risk of contamination and cross contamination from articles in adjacent units as well as exposure to dangerous airborne particulates from the boat crushing operation.

Details and supporting evidence are contained in the above referenced declarations.

In any event, even if conditions at Marinship Park were ideal, Resolution 6009 does not exempt those encamped there from having to break camp at dawn and return at night. Therefore, it does not solve the issue of community spread in the least.

**Defendants Disregard 9th Circuit's "Sliding Scale" Approach to Likelihood of Success on the Merits; Reliance on *Yamaha*, *Twombly* and *Bernal* is Misplaced**

As Defendants correctly point out, under *Twombly* "a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." However, in considering factual allegations, the Supreme Court sets the following standard: "Factual allegations must be *enough to raise a right to relief above the speculative level*, see 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235–236 (3d ed. 2004) (hereinafter Wright & Miller (Emphasis added.)" *Bell Atlantic Corp v. Twombly*, 550 US 397 (1997).

*Twombly* also holds, citing to *Conly v. Gibson*, 355 U.S.45, that "a complaint should not be dismissed for failure to state a claim unless ***it appears beyond doubt*** *that* ***the plaintiff can prove no set of facts*** *in support of his claim which would entitle him to relief.*" 355 U. S., at 45–46. (Emphasis added.) See also, *Ascon Properties, Inc.* v. *Mobil Oil Co.*, 866 F. 2d 1149, 1155 (CA9 1989) ("In practice, a complaint … must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under *some* viable legal theory"

Finally, explaining why it dismissed plaintiff Atlantic Bell's complaint, the Supreme Court held that to obtain the relief sought "we do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that ***is plausible on its face***. Because the plaintiffs here ***have not nudged their claims across the line from conceivable to plausible***, their complaint must be dismissed." *Bell v. Twombley, Id. (*Emphasis Added.)

Here, plaintiffs have not only "nudged" their claims and grounds for immediate injunctive relief across the line from conceivable to plausible, they have provided ample facts to march far past that line and satisfy the elements required for a Temporary Restraining Order.

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**Deference to Public Safety Official Includes Deference to County and Federal Public Health and Safety Officials Which, Regarding COVID-19, Have All Recommended Against Clearing of Homeless Encampments.**

Defendants' reliance on *Yamaha Corp. of America v. State Bd. of Equalization*, 19 Cal.4th 1 (1998) and other cases addressing judicial deference to "[p]ublic safety officials…to make local public safety determinations" is misplaced. The Court in *Yamaha* actually condemned unconditional deference, holding, "Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent-the weight it should be given-is thus fundamentally situational. A court assessing the value of an interpretation must consider a complex of factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command. (*Yamaha*, Id., Emphasis added.) The Court further held, "An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts…however…the binding power of an agency's interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation. *Ibid.*

Here, not only are members of the Sausalito City Council not "public safety officials" in a strict sense but more important, enactment and enforcement of Resolution 6009 must be considered in the context of the deadliest and still ongoing pandemic in over one hundred years which has already infected 12, 945 people in Marin County and claimed over half a million American lives. Considering *Yamaha's* instruction that judicial deference is "fundamentally situational" requiring "a complex of issues material to the substantive legal issue before [the court]," Defendants' attempt to avoid judicial review of Resolution 6009, the "legal" basis for expelling the residents of Dunphy Park, must fail.

**There was no "Extreme Delay" in Plaintiffs' filing the Application for TRO/PI and, in any case, there was and is No Prejudice to Defendants**

Defendants' rely on *Rovio Entertainment Ltd. v. Royal Plush Toys, Inc.* 907 F. Supp 2d 1086 (N.D.Cal. 2012) to support their assertion that Plaintiffs' "extreme delay" in requesting a TRO "militates against its issuance." However, even accepting Defendants' interpretation of *Rovio*, Defendants' concede that the requirement is for the seeker of a TRO to file "as quicky as possible." What Defendant leaves out of its chronology showing "extreme delay" is Plaintiffs' Counsel's attempt to informally resolve the matter and his having provided opposing counsel with a two-day extension and offer to cease work on the TRO application in exchange for a brief suspension of the enforcement of Resolution 6009. See, Declaration of Anthony D. Prince. When Defense counsel failed to communicate either acceptance or refusal of Plaintiffs' offer, Plaintiff resumed work on the application.

Also, Plaintiff's counsel—a solo practice with no other attorneys, no paralegals, investigators, assistants or clerical staff – had to conduct all of these functions himself, hampered by the difficulties of communicating with and obtaining evidence from homeless clients and witnesses, so as to present to the Court an Application that would satisfy the requirements for injunctive relief. This is not to argue that lack of resources may justify a delay, but to show that Plaintiffs did in fact, file for the TRO "as soon as possible."

Finally, to Defendants' contention that the Application had to be filed, or is somehow untimely or indicative of extreme delay, in fact, in *Santa Cruz Homeless Union v. Bernal* to which both sides now cite, and in which Plaintiffs' Counsel serves as attorney for plaintiffs, the Application for TRO was filed *after* Phase I of that City's plan to remove campers from San Lorenzo Park had already been carried out and Phase II was about to begin.

There was no allegation nor finding by Magistrate Judge Susan van Keulen of "extreme delay" in filing our Application for a preliminary injunction which, as this Court is aware, was granted on January 20, 2021 after granting and twice extending a Temporary Restraining Order.



**CONCLUSION**

For the reasons set forth in this Reply, in Plaintiffs' Ex Parte Application and at the hearing on Plaintiffs' Application, this Court is urged to GRANT plaintiffs' request for immediate injunctive relief.

Respectfully Submitted,

Dated: February 22, 2021

Anthony D. Prince,
Attorney for Plaintiffs

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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; ROBBI POWELSON; SHERI l. RILEY; ARTHUR BRUCE; MELANIE MUASOU; SUNNY JEAN YOW; NAOMI MONTEMAYOR; MARK JEFF; MIKE NORTH; JACKIE CUTLER and MICHAEL ARNOLD on behalf of themselves and similarly situated homeless persons,

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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 FLOJAUNE COFER, PhD, MPH, IN SUPPORT OF PLAINTIFFS' *EX PARTE* APPLICATION FOR INJUNCTIVE RELIEF**

Date: February 23, 2021
Time: 1:30 pm
Courtroom: Zoom Videoconference

Judge: Hon. Edward M. Chen

## DECLARATION OF FLOJAUNE COFER, PhD, MPH

I declare the following to be true to the best of my public health expertise:

1. I, Doctor Flojaune Cofer, PhD, MPH, graduated with a Bachelor of Science Degree in Chemistry, a Bachelor of Arts Degree in Women's Studies, and a minor in Mathematics from Spelman College in 2004, earned a Master of Public Health Degree in 2006 from the University

of Michigan, and completed a Doctorate Degree in Epidemiology from the University of Michigan in 2010.

2. I have reviewed City of Sausalito Resolution Nos. 6008 and 6009 and Exhibit A (Standard Operating Procedures) attached thereto as well as Plaintiffs' Application for Injunctive Relief and the City's Opposition thereto. As more fully discussed below, in my professional opinion, implementation of these measures and, specifically, the clearing of the Dunphy Park encampment under the current conditions without first securing safe, ***indoor*** and appropriate housing/shelter, will greatly increase the risk of exposure of those cleared from the park and the public at large to community spread of COVID-19.



3. The city-wide ban on daytime camping – which, per Resolution 6009 - will apply to those who may be forced to relocate to Marinship Park, is, as more fully discussed below, without question directly contrary to CDC (Centers for Disease Control) guidelines as well as orders and guidance regarding homeless encampments from the City of Sausalito and the County of Marin, as it will increase community spread of COVID-19 just as new and far more contagious variants of the virus have made their way to California and vaccinations are only beginning to become available. (See Exhibit A)

4. By way of professional standing, I am currently employed by Public Health Advocates, where I hold the position of Senior Director of Policy. My responsibility is to lead our state and local advocacy efforts to research, develop and pass legislation that fosters health equity, promotes social justice, and expands opportunity for communities facing the greatest barriers to wellbeing. Our current statewide California efforts focus on restorative justice and criminal

justice reform, food access, diabetes and sugary drinks, homelessness, marijuana equity, and childhood trauma.

5. As an epidemiologist, I study the distribution, determinants, and conditions of the spread of disease and injury patterns in human populations. My role as an epidemiologist focuses on defining, identifying, and tracking disease, understanding the risk factors that contribute to disease and identifying methods to prevent the onset of disease.

6. On January 30, 2020, the World Health Organization (WHO) declared COVID-19 a global health emergency. According to the WHO, the three criteria for this designation are that it is an "extraordinary event," that it "constitutes a public health risk to other States through the international spread of disease" and that it "potentially requires a coordinated international response."

7. On March 4, 2020, Governor Newsom issued an Emergency Proclamation declaring a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare to slow the spread of COVID-19.

8. On March 11, 2020, the WHO declared COVID-19 a "pandemic," marking the first time the international health organization has called an outbreak a pandemic since the H1N1 "swine flu" in 2009. A pandemic is the worldwide spread of a new disease.

9. In response to the rapid spread of COVID-19 statewide, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, a statewide stay at home order to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19. Although the original order has been

modified at times to be more restrictive and less restrictive, the current Order still requires that all persons limit travel other than to carry out necessary functions. Coronaviruses are a large family of viruses which may cause illness in animals or humans.

10. On February 11, 2020, the most recently discovered novel human coronavirus was officially named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-Cov-2) and the coronavirus disease it causes was named COVID-19.

11. SARS-Cov-2 is easily transmittable; people can develop COVID-19 from others who have contracted the virus. The virus can spread from person to person through small droplets from the nose or mouth which are spread when an infected person coughs or exhales. These droplets land on objects and surfaces around the person. Others can contract the virus if they breathe in these droplets or touch exposed objects or surfaces prior to touching their eyes, nose, or mouth. Preliminary evidence shows that asymptomatic persons may transmit the disease and a person may be infected up to 14 days before symptom onset.

12. On August 6, 2020, the Centers for Disease Control and Prevention (CDC) issued "Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials" which outlines, among other things, the following:

- People experiencing unsheltered homelessness -- that is persons sleeping outside or in places not meant for human habitation -- may be at risk for infection when there is community spread of COVID-19.
- Some people who are experiencing unsheltered homelessness may be at increased risk of severe illness from COVID-19 due to older age or certain underlying medical

conditions, such as chronic lung disease or serious heart conditions.

- Connecting people to stable housing should continue to be a priority.
- Shelters should stay open unless homeless service providers, health departments, and housing authorities have determined together that a shelter needs to close.
- **If individual housing options are not available, allow people who are living unsheltered or in encampments to remain where they are.**
- **Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.**
- If toilets or handwashing facilities are not available nearby, assist with providing access to portable latrines with handwashing facilities for encampments of more than 10 people. These facilities should be equipped with hand sanitizer (containing at least 60% alcohol).

13. Failure to comply with the CDC public health guidance will result in an exponential growth in the number of people who are infected with SARS-Cov-2 and develop COVID-19.

14. Studies of human biology indicate that cold weather injuries can occur in the general population during low-cold stress (>55 °F) and moderate-cold stress (32–55°F), in addition to high-cold stress (<32 °F) and the likelihood of hypothermia increases by over 50 percent for every 10 degree drop in temperature and by 10 percent for every 1 mm increase in precipitation.

15. Individuals who experience homelessness often spend prolonged periods of time outside, which makes them particularly susceptible to the detrimental effects of cold stress, hypothermia, and, in hot weather, to heat stress and heat stroke under less extreme weather conditions than the general population.



16. Given the preponderance of data, it is my professional opinion – and a consensus position in the field of public health – that local agencies involved in cold weather response should employ strategies to prevent hypothermia for the duration of the winter and early spring instead of only doing so on extremely cold or rainy days. In addition, even as temperatures warm up, the risk of exposure, heat stress and heat stroke to persons who are unhoused will substantially increase the risks of severe disease and death, including those associated with COVID-19.

17. As an epidemiologist, I am familiar with the dangers of cities and counties failing to take proper precautions to follow public health guidance offered by WHO and CDC. It is my professional opinion that people who are unsheltered in the City of Sausalito need to be immediately moved indoors or, consistent with CDC guidelines, be allowed to remain in existing encampments, including Dunphy Paark, if no such indoor housing is available or provided in real time.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, except as to matters stated on information and belief, and as to those matters, I believe them to be true.

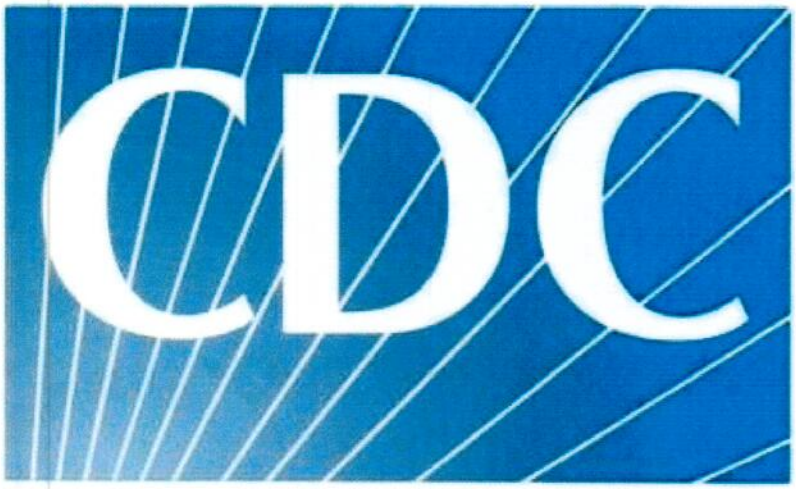
Executed at Sacramento, California.

DATED: February , 2021

Flojaune G. Cofer, PhD, MPH

# Exhibit A

https://www.cdc.gov/




CENTERS FOR DISEASE CONTROL AND PREVENTION

# Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials

Interim Guidance

Updated Aug. 6, 2020

Languages

Print

This interim guidance is based on what is currently known about coronavirus disease 2019 (COVID-19). The Centers for Disease Control and Prevention

(CDC) will update this interim guidance as needed and as additional information becomes available.

Printer friendly versionpdf icon

Summary of Recent Changes

A revision was made on 5/10/2020 to reflect the following:

- Revisions to document organization for clarity
- Description of "whole community" approach
- Clarification of outreach staff guidance
- Clarification of encampment guidance

## In this guide



People experiencing unsheltered homelessness (those sleeping outside or in places not meant for human habitation) may be at risk for infection when there is community spread of COVID-19. This interim guidance is intended to support response to COVID-19 by local and state health departments, homelessness service systems, housing authorities, emergency planners, healthcare facilities, and homeless outreach services. Homeless shelters and other facilities should also refer to the Interim Guidance for Homeless Shelters. Community and faith-based organizations can refer to the Interim Guidance for Communities of Faith for other information related to their staff and organizations.

COVID-19 is caused by a new coronavirus. We are learning about how it spreads, how severe it is, and other features of the disease.

Lack of housing contributes to poor physical and mental health outcomes, and linkages to permanent housing for people experiencing homelessness

should continue to be a priority. In the context of COVID-19 spread and transmission, the risks associated with sleeping outdoors or in an encampment setting are different than from staying indoors in a congregate setting such as an emergency shelter or other congregate living facility. Outdoor settings may allow people to increase physical distance between themselves and others. However, sleeping outdoors often does not provide protection from the environment, adequate access to hygiene and sanitation facilities, or connection to services and healthcare. The balance of risks should be considered for each individual experiencing unsheltered homelessness.

## Community coalition-based COVID-19 prevention and response

Planning and response to COVID-19 transmission among people experiencing homelessness requires a "whole community"external icon approach, which means involving partners in the response plan development, with clearly outlined roles and responsibilities. Table 1 outlines some of the activities and key partners to consider for a whole-community approach.

Table 1: Using a community-wide approach to prepare for COVID-19 among people experiencing homelessness

table 1

| | **Connect to community-wide planning** |
|---|---|
| Connect with key partners to make sure that you can all easily communicate with each other while pr cases. A community coalition focused on COVID-19 planning and response should include: | • Local and state health departments<br>• Outreach teams and street medicine providers<br>• Homeless service providers and Continuum of Care leadership<br>• Emergency management<br>• Law enforcement<br>• Healthcare providers<br>• Housing authorities<br>• Local government leadership |

- Other support services like case management, emergency food programs, syringe service prog support
- People with lived experiences of homelessness

People with lived experiences of homelessness can help with planning and response. These individuals to strengthen outreach and engagement efforts. Develop an advisory board with representation from former experiences of homelessness to ensure community plans are effective.

**Identify additional sites and resources**

Continuing homeless services during community spread of COVID-19 is critical. Make plans to maintair experiencing unsheltered homelessness. Furthermore, clients who are positive for COVID-19 need to h safe place to stay, separated from others who are not infected. To facilitate the continuation of service should identify resources to support people sleeping outside as well as additional temporary housing, rooms that are able to provide appropriate services, supplies, and staffing. These sites should include:

- Overflow sites to accommodate shelter decompression and higher shelter demands
- Isolation sites for people who are confirmed to be positive for COVID-19 by laboratory testing
- Quarantine sites for people who are awaiting testing, awaiting test results, or who were expos
- Protective housing for people who are at increased risk for severe illness from COVID-19

Depending on resources and staff availability, housing options that have individual rooms (such as hot bathrooms should be considered for the overflow, quarantine, and protective housing sites. In additio clients to housing opportunities after they have completed their stay in these temporary sites.

## Communication

Outreach workers and other community partners, such as emergency food provision programs or law enforcement, can help ensure people sleeping outside have access to updated information about COVID-19 and access to services.

- Stay updated on the local level of transmission of COVID-19 through your localexternal icon and state health departments.
- Build on existing partnerships with peer navigators who can help communicate with others.
- Maintain up-to-date contact information and areas frequented for each person.
- Communicate clearly with people sleeping outside.
    - Use health messages and materials developed by credible public health sources, such as your local and state public health

departments or the Centers for Disease Control and Prevention (CDC).
    - Post signs in strategic places (e.g. near handwashing facilities) providing instruction on hand washing and cough etiquettepdf icon.
    - Provide educational materials about COVID-19 for non-English speakers, those with low literacy or intellectual disabilities, and people who are hearing or vision impaired.
    - Ensure communication with clients about changes in homeless services policies and/or changes in physical location of services such as food, water, hygiene facilities, regular healthcare, and behavioral health resources.
- Identify and address potential language, cultural, and disability barriers associated with communicating COVID-19 information to workers, volunteers, and those you serve. Learn more about reaching people of diverse languages and cultures.

Considerations for outreach staff

*Staff training and policies*

- Provide training and educational materials related to COVID-19 for staff.
- Minimize the number of staff members who have face-to-face interactions with clients.
- Develop and use contingency plans for increased absenteeism caused by employee illness or by illness in employees' family members. These plans might include extending hours, cross-training current employees, or hiring temporary employees.
- Assign outreach staff who are at increased risk for severe illness from COVID-19 to duties that do not require them to interact with clients in person.
- Outreach staff should review stress and coping resources for themselves and their clients during this time.

*Staff prevention measures*

- Encourage outreach staff to maintain good hand hygiene by washing hands with soap and water for at least 20 seconds or using hand sanitizer

(with at least 60% alcohol) on a regular basis, including before and after each client interaction

- Advise staff to maintain 6 feet of distance while interacting with clients and other staff, where possible.
- Require outreach staff to wear masks when working in public settings or interacting with clients. They should still maintain a distance of 6 feet from each other and clients, even while wearing masks.
- Advise outreach staff to avoid handling client belongings. If staff are handling client belongings, they should use disposable gloves, if available. Make sure to train any staff using gloves to ensure proper use and ensure they perform hand hygiene before and after use. If gloves are unavailable, staff should perform hand hygiene immediately after handling client belongings.
- Outreach staff who are checking client temperatures should use a system that creates a physical barrier between the client and the screener as described here.
    - Where possible, screeners should remain behind a physical barrier, such as a car window, that can protect the staff member's face from respiratory droplets that may be produced if the client sneezes, coughs, or talks.
    - If social distancing or barrier/partition controls cannot be put in place during screening, PPE (i.e., facemask, eye protection [goggles or disposable face shield that fully covers the front and sides of the face], and a single pair of disposable gloves) can be used when within 6 feet of a client.
    - However, given PPE shortages, training requirements, and because PPE alone is less effective than a barrier, try to use a barrier whenever you can.
- For street medicine or other healthcare staff who are providing medical care to clients with suspected or confirmed COVID-19 and close contact (within 6 feet) cannot be avoided, staff should at a minimum, wear eye protection (goggles or face shield), an N95 or higher level respirator (or a facemask if respirators are not available or staff are not fit tested), disposable gown, and disposable gloves. **Masks are not PPE and should not be used when a respirator or facemask is indicated.** Healthcare providers should follow infection control guidelines.

- Outreach staff who do not interact closely (e.g., within 6 feet) with sick clients and do not clean client environments do not need to wear personal protective equipment (PPE).
- Outreach staff should launder work uniforms or clothes after use using the warmest appropriate water setting for the items and dry items completely.

*Staff process for outreach*

- In the process of conducting outreach, staff should
    - Greet clients from a distance of 6 feet and explain that you are taking additional precautions to protect yourself and the client from COVID-19.
    - If the client is not wearing a mask, provide them with one.
    - Screen clients for symptoms by asking them if they feel as if they have a fever, cough, or other symptoms consistent with COVID-19.
    - Children have similar symptoms to adults and generally have mild illness
        - Older adults and persons with medical comorbidities may have delayed presentation of fever and respiratory symptoms.
        - If medical attention is necessary, use standard outreach protocols to facilitate access to healthcare.
    - Continue conversations and provision of information while maintaining 6 feet of distance.
    - If at any point you do not feel that you are able to protect yourself or your client from the spread of COVID-19, discontinue the interaction and notify your supervisor. Examples include if the client declines to wear a mask or if you are unable to maintain a distance of 6 feet.
    -

## Considerations for people experiencing unsheltered homelessness

*Help clients prevent becoming sick with COVID-19*

- Consider the balance of these risks when addressing options for decreasing COVID-19 spread. Those who are experiencing unsheltered homelessness face several risks to their health and safety.
- Continued linkage to homeless services, housing, medical, mental health, syringe services, and substance use treatment, including provision of medication-assisted therapies (e.g., buprenorphine, methadone maintenance, etc.). Use telemedicine, when possible.
- Some people who are experiencing unsheltered homelessness may be at increased risk of severe illness from COVID-19 due to older age or certain underlying medical conditions, such as chronic lung disease or serious heart conditions.
    - Reach out to these clients regularly to ensure they are linked to care as necessary.
    - Prioritize providing individual rooms for these clients, where available.
- Recommend that all clients wear masks any time they are around other people. Masks should not be placed on young children under age 2, anyone who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the mask without assistance.
- Provide clients with hygiene materials, where available.
- Discourage clients from spending time in crowded places or gathering in large groups, for example at locations where food, water, or hygiene supplies are being distributed.
    - If it is not possible for clients and staff to avoid crowded places, encourage spreading out (at least6 feet between people) to the extent possible and wearing masks.

*Help link sick clients to medical care*

- Regularly assess clients for symptoms.
    - Clients who have symptoms may or may not have COVID-19. Make sure they have a place they can safely stay in coordination with local health authorities.
    - If available, a nurse or other clinical staff can help with clinical assessments. These clinical staff should follow personal protective measures.
    - Provide anyone who presents with symptoms with a mask.

- Facilitate access to non-urgent medical care as needed.
- Use standard outreach procedures to determine whether a client needs immediate medical attention. Emergency signs include (this list is not all inclusive. Please refer clients for medical care for any other symptoms that are severe or concerning to you):
  - Trouble breathing
  - Persistent pain or pressure in the chest
  - New confusion or inability to arouse
  - Bluish lips or face
- Notify the designated medical facility and personnel to transfer that clients might have COVID-19.

- If a client has tested positive for COVID-19
  - Use standard outreach procedures to determine whether a client needs immediate medical attention.
  - If immediate medical attention is not required, facilitate transportation to an isolation site.
  - Notify designated medical facility and personnel that the client has tested positive for COVID-19.
  - If medical care is not necessary, and if no other isolation options are available, advise the individual on how to isolate themselves while efforts are underway to provide additional support.
  - During isolation, ensure continuation of behavioral health support for people with substance use or mental health disorders.
  - In some situations, for example due to severe untreated mental illness, an individual may not be able to comply with isolation recommendations. In these cases, community leaders should consult local health authorities to determine alternative options.
  - Ensure the client has a safe location to recuperate (e.g., respite care) after isolation requirements are completed, and follow-up to ensure medium- and long-term medical needs are met.

## Considerations for encampments

- If individual housing options are not available, allow people who are living unsheltered or in encampments to remain where they are.

    - Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.
- Encourage those staying in encampments to set up their tents/sleeping quarters with at least 12 feet x 12 feet of space per individual.
    - If an encampment is not able to provide sufficient space for each person, allow people to remain where they are but help decompress the encampment by linking those at increased risk for severe illness to individual rooms or safe shelter.
- Work together with community coalition members to improve sanitation in encampments.
- Ensure nearby restroom facilities have functional water taps, are stocked with hand hygiene materials (soap, drying materials) and bath tissue, and remain open to people experiencing homelessness 24 hours per day.
- If toilets or handwashing facilities are not available nearby, assist with providing access to portable latrines with handwashing facilities for encampments of more than 10 people. These facilities should be equipped with hand sanitizer (containing at least 60% alcohol).

## COVID-19 Readiness Resources

- Considerations for food pantries and food distribution sites
- Visit cdc.gov/COVID19 for the latest information and resources
- Information for health departments
- Guidance for homeless service providers
- COVID-19 fact sheets for people experiencing homelessness (at the bottom of the page)
- Department of Housing and Urban Development (HUD) COVID-19 resourcesexternal icon
- CDC's COVID-19 stress and coping information

- Facebook

- Twitter

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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; ROBBI POWELSON; SHERI l. RILEY; ARTHUR BRUCE; MELANIE MUASOU; SUNNY JEAN YOW; NAOMI MONTEMAYOR; MARK JEFF; MIKE NORTH; JACKIE CUTLER and MICHAEL ARNOLD on behalf of themselves and similarly situated homeless persons,<br><br>Plaintiffs<br><br>vs.<br><br>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,<br><br>Defendants. | Case No. 3:21-cv-01143-EMC<br><br>**SUPPLEMENTAL DECLARATION OF ROBBIE POWELSON**<br><br>Date: February 23, 2021<br>Time: 1:30 pm<br>Courtroom: Zoom Videoconference<br><br>Judge: Hon. Edward M. Chen |

**SUPPLEMENTAL DECLARATION OF ROBBIE POWELSON**

I, ROBBIE POWELSON, declare the following:

1. I, Robbie Powelson, am a homeless resident of the Dunphy Park encampment and President of the Sausalito Chapter of the California Homeless Union.

2. On February 21, 2021, I went to Marinship Park and conducted an inspection of the mens and womens restrooms. I have attached hereto as Exhibit A, photographs I took

showing that neither restroom is equipped with soap, hand sanitizer, paper towels, trash receptacles or any other hygiene items.

3. I have attached hereto as Exhibit B, a series of photographs I took depicting the interior of the mobile toilet ("porta potty") located at Dunphy Park and the servicing of same by United Services, with whom I have a contract, evidenced by the receipt included with the photographs.



4. At Dunphy Park, we are being provided with food, water, clothing, basic survival gear and COVID-19 related hygiene products from the following organizations:

San Francisco Marin Food Bank
Sausalito Presbyterian Church
Inner City Baptist Fellowship Church
Downtown Streets Team
Marin Community Fridges
North Bay Democratic Socialists Of America
Marin County Democratic Socialists of America
Marin Mutual Aid Brigade
Marin Interfaith Council
Marin Interfaith Street Chaplaincy
Play Marin!
Saint Vincent de Paul Society
Department of Veterans Affairs
Tiburon Sunset Rotary Club
Lagunitas Middle School

5. There is plenty of room for the Mobile Shower truck to use the access road leading to the Dunphy Park encampment or park on the adjacent parking lot. There is no logistical difference between Dunphy Park and Marinship. They could use water hook ups for the showers at Dunphy, and could open the bathrooms in other parts of the park which are currently locked. City Council refused to bring bathrooms and handwashing stations for the camp, so that our camp had to pay for it ourselves. They did not provide masks for people sheltering in place, which we have had to pay for. They also did not provide educational information to campers about the dangers

of COVID to increase mask compliance, which we have. The city has offered no COVID testing to me or my campmates to my knowledge.

Our camp has taken serious precautions for COVID while the city has done nothing to protect people with serious disabilities from it. Now they further jeopardize us by forcing us to move into a camp that only hides us from view.

Dated: February 21, 2021 /s/ Robbie Powelson

Executed at Sausalito, CA

# Exhibit A

# Exhibit B


United
SITE SERVICES
1-800-TOILETS


ATTENT


Purell


FIRST PULL UP
**ATTENT
FEDERAL O

**STATEMENT**

United Site Services Northeast, Inc.
PO Box 5502
Binghamton, NY 13902-5502
Customer Service: 1-800-864-5387

Customer Number : ACT-01421548
Customer Name : TAM EQUITY CAMPAIGN
Statement Date: 02/21/21
Account Balance : $636.84
Unapplied Payments : $0.00
Unapplied Credits : $0.00

**Bill To:**
Robbie
po box 773
nevada, California 94948

**Invoices**

| Document | Due Date | 0 – 30 | 31 – 60 | 61 – 90 | 91 – 120 | Over 120 | Balance |
|---|---|---|---|---|---|---|---|
| INV-00044125 | 02/05/21 | $636.84 | | | | | $636.84 |
| | | $636.84 | $0.00 | $0.00 | $0.00 | $0.00 | $636.84 |

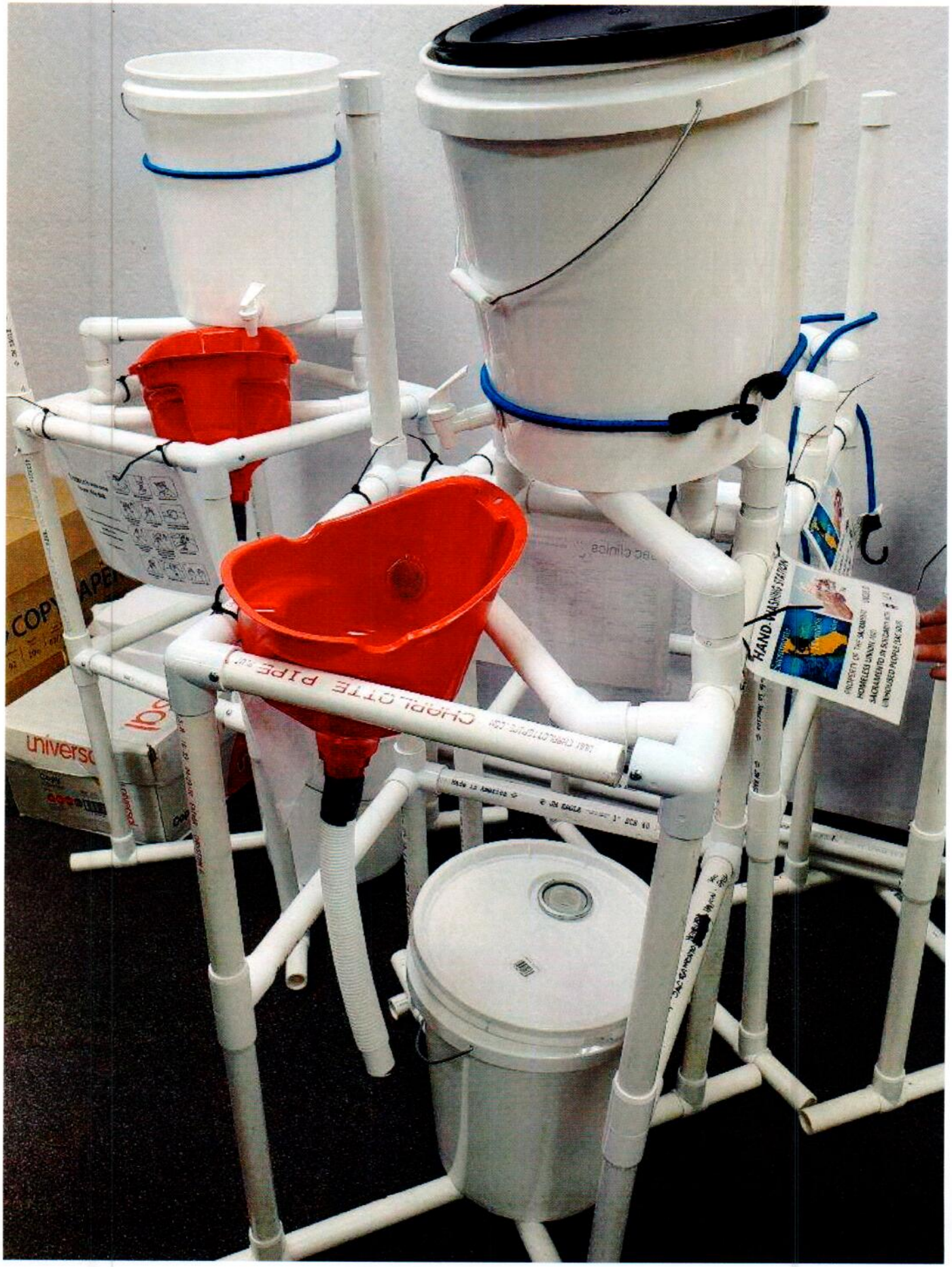
To make your payment online visit: www.UnitedSiteServices.com/BillPay

To remit payment via check, mail to:
United Site Services
PO Box 660475
Dallas, TX 75266-0475

Thanks for your business! Please notify us of any discrepancies on this statement.

Please note, this statement may not represent your full balance with USS. As we transition to a new invoicing system, you may receive multiple statements every month.

Accounts Resolution Specialist
United Site Services
ARS@unitedsiteservices.com
208-906-0446


CHAPLOTTE PIPE
HAND WASHING STATION

# STAFF REPORT
SAUSALITO CITY COUNCIL

**MEETING DATE:** September 24, 2019

**AGENDA TITLE:** Mobile Shower Program Update

**LEAD DEPARTMENT:** Sausalito Police Department

## RECOMMENDED MOTION:

Receive and file report.

## SUMMARY

The Sausalito Police Department is prepared to address the Sausalito City Council with an update to Mobile Shower Program taking place at Marinship Park on Tuesdays and Fridays from 8AM-11AM.

## BACKGROUND

On September 25, 2018, the Sausalito Police Department and the Downtown Streets Team provided presented a proposal to the City Council recommending the implementation of a six (6) month pilot program for the Marin Mobile Care's Mobile Shower Program to be operated at Marinship Park twice a week.

Marin Mobile Care's shower program has two primary goals. The first is to offer a basic need, a shower, which lends itself to people rediscovering dignity and washing away stigma. A shower alleviates some of the day-to-day stresses of being in "survival mode" and often allows people to focus on their next step.

The second goal of the shower program is to connect individuals to the resources they need, such as a bed for the night, medical care, mental health counseling, food resources, and employment and housing opportunities. Downtown Streets Team staff are on site at the mobile showers to help guests connect with these resources, look up bus routes, or research solutions to meet specific needs.

The City Council did not take action to implement the pilot program at your September 25th meeting. Council directed staff to conduct further community outreach regarding the proposed pilot program and research other possible sites where the Marin Mobile Care Shower Program could be hosted and report back to the Council on November 13, 2018.

On November 13, 2018, the Sausalito Police Department and the Downtown Streets Team reported back to the City Council regarding the following items:

- Community Outreach – City Staff informed the community of the possibility of the pilot mobile shower program in Sausalito via the distribution of flyers to the community, Nixle text messages/e-mails, mobile shower trailer tour at multiple locations, community flyer mailing, Sausalito Current's newsletter articles, media stories, Sausalito website – Hot Topics page, mobile shower community workshop, and community surveys (via Open City Hall and Next Door).
- Proposed Sites Search – City Staff and the Downtown Streets team researched the following sites as possible locations where the pilot mobile shower program could be posted:
    - Marinship Park
    - 300 Locust Street (Upper Parking Lot)
    - 300 Turney Street (Boat Ramp)
    - Municipal Parking Lot #4
    - City Hall Parking Lot
    - Star of the Sea Church
    - Christ Episcopal Church

  The researched revealed that the most suitable location for the needs of the mobile shower trailer was Marinship Park with another possible suitable location of City Hall's Parking Lot.

In a unanimous decision, the City Council directed the Sausalito Police Department and City Staff to work with the Downtown Streets Team to enter into an agreement with Marin Mobile Care to develop and operate a six (6) month mobile shower pilot program at Marinship Park and City Hall's Parking Lot. The showers would be hosted twice a week for six (6) months beginning in December 2018. The Council provided the Sausalito Police Department with the flexibility to determine hours and days of operations of the shower. The Council also provided the police department the ability to adjust the locations of the pilot mobile shower program or end the pilot shower program if safety concerns arouse. Lastly, the Council directed the Sausalito Police Department to report back to them in March 2019 with a status report regarding the pilot mobile shower program.

On March 27, 2019, the Sausalito Police Department provided the City Council with an update regarding the first three (3) months of the pilot mobile shower program. During this update, the Council was informed of the following items:

- Pilot program planning regarding dates and locations
- Site locations and conditions

- Change of Friday mobile shower site from City Hall to Marinship Park due to safety concerns
- Statistics regarding mobile shower use
- Review of police calls for service

On June 11, 2019, the City Council received an update on the pilot Mobile Shower Program. During this update, the Council was informed of the following items:

- Statistics regarding mobile shower use
- Police calls for service regarding the mobile showers (none)
- Recommendation that the Marinship Park continue to be utilized as the site for the mobile showers

Due to the success of the pilot Mobile Shower Program, on June 11, 2019 the City Council adopted the Mobile Shower Program as a City sanctioned program.

## DISCUSSION/ANALYSIS

The following are statistics provided by the Downtown Streets Team regarding the pilot mobile shower program in Sausalito from December 2018 through August 2019 (September 2019 statistics are unavailable at this time):

| | |
|---|---|
| Number Of Showers Provided | 877 |
| Number Enrolled in HMIS | 30 |
| Number of VI-SPDAT | 58 |

(Note: VI-SPDAT stands for vulnerability index service prioritization decision assistance tool, it is a scale that allows assessments to be made. HMIS is Homelessness Management Information System, this is the database that all services use to store information securely).

In regards to the statistics/information listed above, it is important to remember that that there have been two (2) stoppages of the Shower Program since December 2018. The first stoppage was due to the winter holidays. No mobile showers were hosted in Sausalito, or anywhere else in Marin County, from December 22, 2018 through January 1, 2019. The second stoppage was due to the Sausalito Art Festival (set up, festival, breakdown), Art Festival tents, equipment, etc. took up the space in Marinship Park that is utilized by the mobile showers. No showers were hosted from August 17, 2019 until September 10, 2019 due to the Art Festival.

In addition to the above statistics, other notable information regarding the Mobile Shower Program is:

- Marinship Park is the most popular morning location for mobile showers in the county and the second most popular location across all of the morning and evening locations.
- Individuals who have participated in the pilot mobile shower program have gained employment, gained confidence to reconnect with their family, treated unaddressed chronic and acute health issues, and had their dignity restored to feel comfortable in their own community.
- In addition to their work at the mobile showers, the program's Case Manager is working with the Richardson Bay Harbor Administrator to visit those shower clients that live upon Richardson Bay to see if further assistance can be provided to them.
- The vast majority of people that have utilized the mobile showers are from the Sausalito community (living on boats in Richardson Bay, living in vehicles, or local homeless). Everyone whom has used the mobile showers have been from Marin County.
- Individuals using the mobile showers have arrived by foot, bicycle, and vehicle
- Everyone who utilizes the mobiles showers are asked about their interest in housing. Approximately 50% of those utilizing the mobile showers that live on boats and 75% of those that live on land have expressed interest in getting into housing. However, per mobile shower staff many people who want housing are apprehensive about going through the system that starts via staying at Mill Street. This could be because people don't trust the coordinated system and perhaps feel more anti-establishment. This is a similar pattern to what the mobile shower staff has seen in individuals staying in encampments in San Rafael and Novato. However, the Case Manager, Downtown Streets Team, Sausalito, and other agencies are developing a list of the most vulnerable people that are living on the water. There is hope that this coalition will increase the ability to obtain housing for those living on the water.

On Friday, August 30, 2019, City staff gave a presentation regarding the Mobile Shower Program to a contingent of officials from Vina Del Mar, Chile (Sausalito's sister City). The officials from Vina Del Mar were impressed with the program and felt that it could be implemented with beneficial effects in this jurisdiction.

Mobile Shower Program staff have been provided with information regarding the City's Safe Harbor program regarding transitioning individuals living on vessels on Sausalito waters into slips at marinas. Shower staff have made this material available to clients using the showers.

POLICE CALLS FOR SERVICE

A review of the Police Department's Report Management System and Computer Added Dispatch system revealed that there have been no police calls for service regarding the pilot mobile shower program or related to the pilot mobile shower program. There has also been no increase in the number of calls for service at Marinship Park.

One person has been banned from the showers by Mobile Shower Program staff due to the individual's argumentative and rowdy behavior. The Mobile Shower Program staff successfully dealt with the individual without the need for police intervention.

## ALTERNATIVES

None

## FISCAL IMPACT

N/A

## STAFF RECOMMENDATIONS

Receive and file report.

## ATTACHMENTS

None.

PREPARED BY: William R. Fraass, Captain
REVIEWED BY: John Rohrbacher, Chief of Police
SUBMITTED BY: Adam W. Politzer, City Manager

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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; ROBBI POWELSON; SHERI l. RILEY; ARTHUR BRUCE; MELANIE MUASOU; SUNNY JEAN YOW; NAOMI MONTEMAYOR; MARK JEFF; MIKE NORTH; JACKIE CUTLER and MICHAEL ARNOLD 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

**SUPPLEMENTAL DECLARATION OF ANTHONY D. PRINCE IN REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' *EX PARTE* APPLICATION FOR INJUNCTIVE RELIEF**

Date: February 23, 2021
Time: 1:30 pm
Courtroom: Zoom Videoconference

Judge: Hon. Edward M. Chen

## SUPPLEMENTAL DECLARATION OF ANTHONY D. PRINCE

The following is a true and correct statement based on personal knowledge and otherwise upon information and belief which I believe to be true.

1. I, Anthony D. Prince, hereby declare that I am an attorney licensed in the State of California and admitted to the federal court in the Northern and Eastern Districts as well as to the Ninth Circuit Court of Appeals.

2. On February 17 2021, I conducted inspections of the Dunphy Park homeless encampment as well as the area in Marinship Park where the City of Sausalito intends to forcibly relocate homeless persons presently encamped at Dunphy Park.

3. At Dunphy I spoke with members of the Sausalito/Marin County local of the California Homeless Union, in which I serve as Lead Organizer and General Counsel. I took a number of photographs, attached hereto as Exhibits ____through _____. The photographs depict a camp consisting of approximately 20 – 25 persons in which tents were, on the whole, placed no more than 6 – 10 feet apart, except in the case of family units. I observed the preparation and distribution of food, some of which was prepared in a small kitchen from donations brought in from many community organizations. (See Supplemental Declaration of Robbie Powelson). I observed that on the whole, residents were wearing masks practicing social distancing when outside of their individual tents in which the majority spend most of the day and night.

4. I also observed and inspected both the interior and exterior of a portable toilet "porta-potty" (See Exhibit _____and Exhibits ____through_____to the Declaration of Robbie Powelson.) The porta potty was clean, fully-equipped well maintained by United _____pursuant to a contract with Robbie Powelson, Presidednt of the local Homeless Union. (See Exhibit _____to the Supplemental Declaration of Robbie Powelson.)

5. Overall, the campsite was relatively neat and orderly and constituted a friendly and peaceful community of persons of all ages, backgrounds physical circumstances, including persons with visible disabilities requiring the use of assisted walking devices and wheelchairs.

6. I was able to observe an access road directly into the encampment from _____Street and a parking area adjacent to the street. I observed also that the encampment was on higher ground than Marinship Park, which I visited subsequently, and despite recent rains, Dunphy Park encampment was free of water and mud.

7. After spending approximately one hour at Dunphy Park, I went to Marinship Park accompanied by Plaintiff Robbie Powelson, and conducted an investigation of that section of the park to which the City intends to relocate persons displaced from Dunphy Park. There is a parking lot and smaller paved surface approximately 45 – 50 feet in front of the restrooms. Next to the parking lot are tennis courts where I observed persons playing tennis.

8. The "storage facilities", which are no more than uncovered, wire mesh cages approximately 3.5 feet squared which were installed by Defendant City of Sausalito on February 16, 2021, are barely protected by the slight overhang, open on all sides with no solid separation between them and therefore unprotected from the elements and easily breached with a small bolt cutter or hacksaw blade. I immediately shared these and other concerns with Counsel for Defendants by way of an email to which I never received a reply.

9. I then inspected both the men's and women's restrooms, which were unoccupied at the time. They were dirty, poorly-lit and, most important from the standpoint of COVID-19 and personal hygiene contained –and still do not contain—any soap dispensers or otherwise accessible handwashing products or hand-sanitizer of any kind, nor were there paper towel dispensers, paper towels, heated air hand dryers or trash receptacles on any kind. Had the City forced the Dunphy Park residents into Marinship Park the previous day or night as they attempted to do, they would have had to use restrooms that fail every single test of COVID-19 hygiene and sanitation.

10. I then proceeded to the area immediately behind the restrooms where nothing more than an uncovered fence separates the Park from a boat crushing operation conducted by the Army Corps of Engineers. Because it was a Saturday, there was no crushing operations being conducted, however, I observed and photographed boats lying beneath the heavy equipment used to perform the operation and a large, uncovered dumpster in which debris from crushed boats was visible. I observed that the equipment operator's cab had two doors, which, as newspaper photographs

accompanying Plaintiffs' Application depict, would normally be shut during crushing operations, fully enclosing the equipment operator who also wore a face mask. The equipment, the debris-filled dumpster and the boats are all located approximately 25 feet from the chain-link fence that separates the operation from Marinship Park.



11. On the day of my inspection, I observed and took photographs and video of the impact of light to moderate winds coming across Richardson's Bay towards the crushing operation and Marinship Park. The winds caused tree branches to bend and a small American flag to flutter and snap. I would estimate wind speed at between 25 – 30 mph.

12. The hazards of even small amounts of airborne fiberglass dust are well-known to me. Before I became an attorney, I spent over 20 years in the metal trades as a millwright, molder, foundry worker and maintenance engineer as well as Union officer in hazardous work environments trained in the regulation of and protection from occupational and environmental toxins in occupations where fiberglass was and is used as insulation and for other purposes and is allowed to become airborne. This experience includes, but is not limited to the following:

a) Chief Shop Steward and Union Safety Director for Teamsters Local 986 in a Los Angeles kitchen appliance plant where fiberglass insulation used on under-the-counter dishwashers was a pervasive airborne hazard. Over a distance of 100 – 150 yards – roughly equal to or greater than that separating the boat crushing operation and Marinship Park. At Waste King Industries, fiberglass was made airborne throughout the plant, driven by industrial fans with wind velocities considerably below that of moderate (25 – 30 mph.) As a result, workers suffered injury to the eyes and respiratory difficulties of varying degrees. The eye injuries confirmed by photomicrographs depicting microscopic glass particles piercing the [surface] of the eyeball and the respiratory exposures were confirmed by B-reader X-rays showing diffusion of silica particles and the fiberglass, itself, in the lungs. Even a one-time exposure to airborne fiberglass dust particulates would cause

irritation such that the exposed person would rub their eyes, causing further damage as the microscopic particles of spear-like glass literally cut further into the cornea.

To reduce the risk, we were given professional training by Cal-OSHA and industrial hygienists from the National Institutes on Occupational Safety and Health (NIOSH) and made changes to the assembly and sub-assembly lines so as to isolate areas where fiberglass was handled from other parts of the manufacturing process.



b) At Price-Pfister Brass Manufacturing Co., a foundry operation also represented by Teamsters Local 986, I received additional training from NIOSH regarding the hazard of exposure to dust generated by silica—a principal ingredient in the glass that gives fiberglass its name.

c) At the United States Steel South (Chicago) Works, I served for eight years—from 1977 through 1985 -- as the Union Co-Chair of the Labor/Management Joint Safety and Health Committee, representing United Steelworkers Local 65 with a membership of some 8,000. I became a certified Workers Compensation counselor administering, investigation and filing occupational injury and disease claims under the Illinois Workers Compensation Act. Exposure to fiberglass – or, as it was also known, "mineral wool"-- was commonplace as pipefitters, insulators and others in the maintenance department routinely sawed through and hammered off existing fiberglass/mineral wool pipe insulation to perform required maintenance in areas of the steel mill open and subject to winds blowing in from Lake Michigan on whose shores the plant stood. This created the kinds of dust clouds observed being generated by the boat cutting operation in an area immediately adjacent to Marinship Park (See, Declaration of Robbie Powelson) Accordingly, in my capacity as Union Safety and Health Chair, I worked closely with and was trained by Region Five Federal OSHA in the hazards and control of airborne fiberglass dust and asted U.S. Department of Labor attorneys in cases brought for trial before the Region 5 OSHA Review Commission

on this particular issue, in which I was routinely qualified by the Review Commissioner as well as many others before the OSHA Review Commission where I was routinely qualified as an expert witness by way of training, education and hands-on experience as a millwright in U.S. Steel's blast furnace division.



In 1988, I was invited to speak at a Conference on Fiberglass Dust Hazards and Pneumoconiosis sponsored by the CDC, OSHA and NIOSH in Pittsburgh, Pennsylvania. Attached hereto as Exhibit _____is the summary of a paper on a case study of a worker who contracted pneumoconiosis after ten years of exposure to fiberglass dust. Since this is a dose-response disease, it is certain that the victim began to suffer impaired lung function early on in this time period.

d) Because hazards originating in the workplace generally made their way into the surrounding residential communities, Local 65 established an Environmental Committee during which I received additional training from and worked with the Illinois Environmental Protection Agency (Illinois EPA) in the area of community exposure to airborne dust and particulates originating from the workplace, including various gasses and dusts, including asbestos, fiberglass and other toxins.

13. Accordingly, based upon my qualifications including professional training, certifications, status as an expert witness in court and OSHA Review Commission as well as the hands-on experience described above, in cases including transmission and spread of airborne toxic substance I respectfully submit that the dust generated by the boat crushing operation carried out in an area immediately adjacent to the relevant portion of Marinship Park and carried into the Park and surrounding areas, even accounting for dispersal of the dust, nevertheless poses a material and substantial risk both immediately and over the long term to the homeless who will, absent a TRO, be forcibly relocated to this area. Combined with the other issues outlined in my email to opposing counsel and herein, there is a substantial risk to the already compromised immune systems and overall health of this at-risk population given its existing vulnerability to COVID-19, will be affirmatively

increased by the deliberate indifference of Defendants and the state-created danger arising therefrom.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct is a true and correct statement based on personal knowledge, except as to matters stated on information and as to those matters, I believe them to be true.

Executed at Berkeley, California.

DATED: February , 2021

/s/Anthony D. Prince

# Exhibit A

# Camp 3

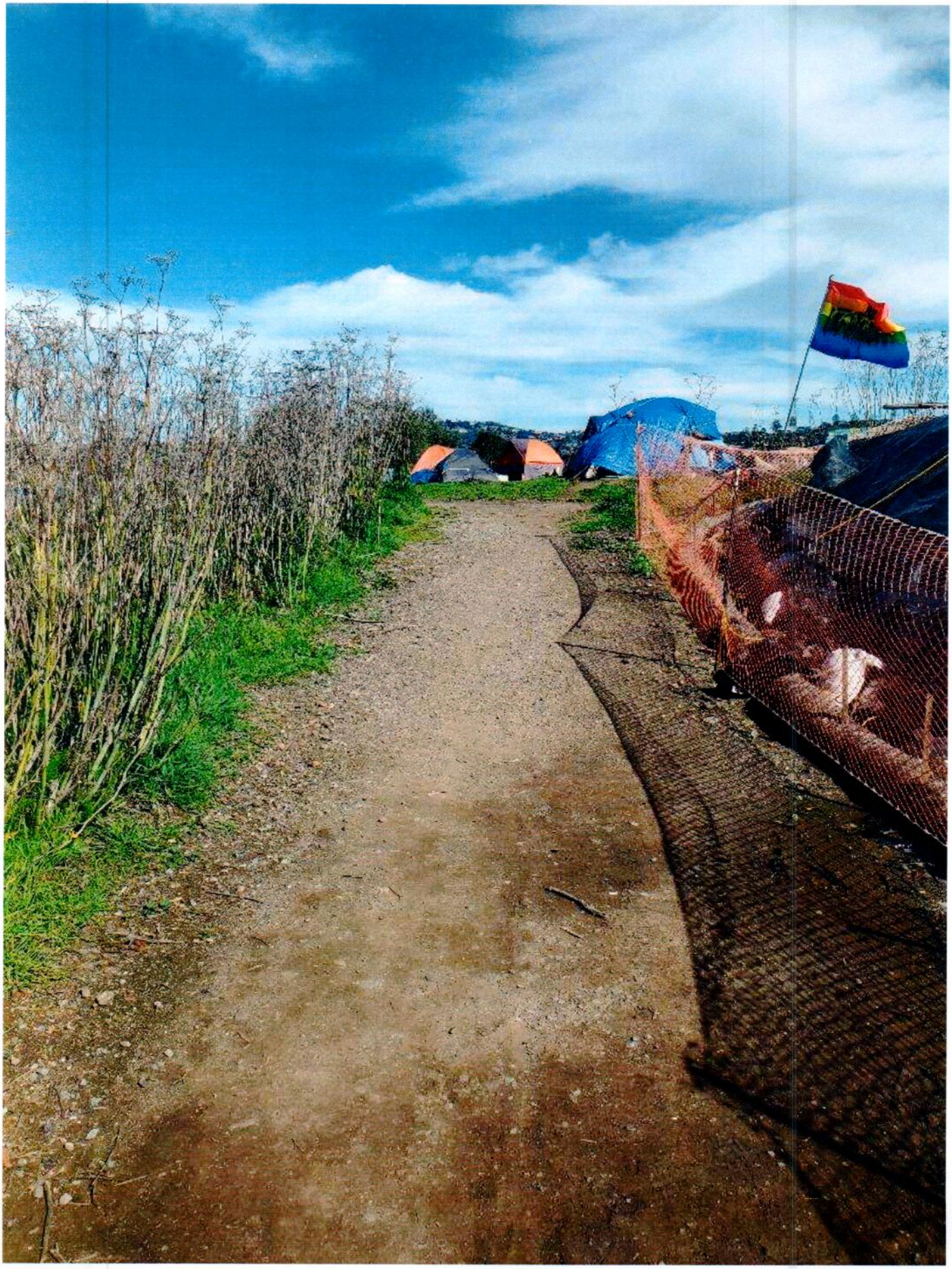
From: Anthony Prince (princelawoffices@yahoo.com)

To: princelawoffices@yahoo.com

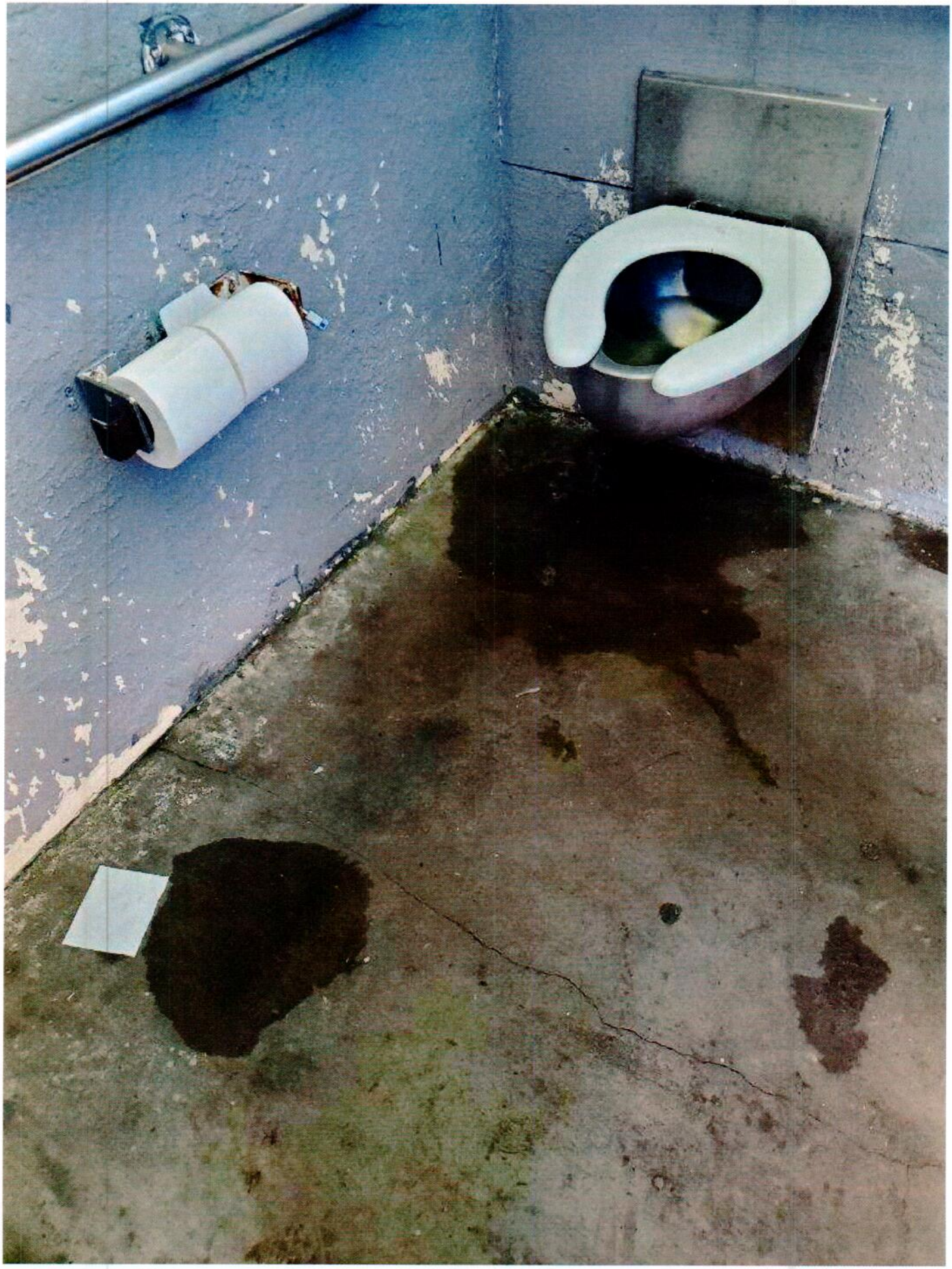
Date: Monday, February 22, 2021, 04:40 AM PST


Sent from Yahoo Mail on Android


ANCHOR OUT
AGAINST
HATE!



# Exhibit B



# Exhibit C

A case study on fiberglass pneumoconiosis with undifferentiated cancer - fiberglass, cancerogenous material.

A case study on fiberglass pneumoconiosis with undifferentiated cancer - fiberglass, cancerogenous material.

Authors

Sano-T

Source

Proceedings of the VIIth International Pneumoconioses Conference, August 23-26, 1988, Pittsburgh, Pennsylvania, USA. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 90-108, 1990 Nov; (Part II):1395-1397

Link

https://www.cdc.gov/niosh/docs/90-108/

NIOSHTIC No.

00198697

Abstract

A case of fiberglass pneumoconiosis, diagnosed at autopsy, was presented. The victim, a 65 year old male, had been exposed to fiberglass from 1939 through 1949 in his occupation. Death occurred in 1957. The use of fiberglass as a substitute for asbestos (1332214) has been increasing. Yet it was noted that long term inhalation of dust and its sustained deposit in alveoli can cause pneumoconiosis of various types whether the dust is insoluble, scarcely soluble or soluble. The foreign body reaction or inflammation was defined as the process during which the action of phagocytes and the cell proliferation containing fibroblasts and fibrocytes occur, resulting in cell degeneration and fibrosis of various grades. The author concludes that the fundamental and common cause of pneumoconiosis is the inflammatory changes of the lung to excessive dusts as foreign matters. He also states that every kind of dust is active and every pneumoconiosis is harmful. There is no inert dust and no benign pneumoconiosis.

Keywords

Lung-disease; Postmortem-examination; Lung-cells; Dust-inhalation; Dust-exposure; Airborne-particles; Lung-irritants; Fiberglass-industry

CAS No.

1332-21-4

Publication Date

19901101

Conference/Symposia Proceedings

Fiscal Year

1991

Identifying No.

DHHS (NIOSH) Publication No. 90-108

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State PA