

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

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

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

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

18 Plaintiffs,

19 v.

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

25 Defendants.
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CASE NO. 3:21-cv-01143-LB

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' EX PARTE APPLICATION
FOR EMERGENCY TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Date: T.B.D.
Time: T.B.D.
Courtroom: T.B.D.

Action Filed: February 16, 2021
Trial Date: T.B.D.
Judge: Magistrate Judge Laurel Beeler

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1 **I. INTRODUCTION**

2 Plaintiffs' *Ex Parte* Application for a Temporary Restraining Order ("TRO") presents the
3 following issue: does the City of Sausalito's relocation of an encampment of homeless individuals
4 from Dunphy Park, a public park with no conveniently located bathrooms and no shower facilities,
5 to Marinship Park, a different public park approximately ½ mile down the road, with conveniently
6 located permanent bathrooms and mobile showers, violate the substantive due process rights of
7 those individuals? The answer is no. For this and other reasons described herein, Plaintiffs have
8 not, and cannot satisfy their burden of proof on this application to enjoin Sausalito's lawful
9 exercise of its police powers.

10 Sausalito has worked tirelessly in cooperation with state and county officials since the first
11 residents formed the Dunphy Park encampment in December of 2020 to locate housing for the
12 individuals in the encampment, as memorialized in Sausalito Resolution No. 6008 adopted in
13 conjunction with Resolution No. 6009 at issue here. But while those efforts continue, Sausalito
14 determined that the current Dunphy Park encampment location poses unacceptable environmental
15 and health risks to the residents of the encampment and to the community because it borders
16 Richardson's Bay and lacks conveniently located permanent bathrooms and mobile shower
17 services. The residents of the Dunphy Park encampment recently exacerbated these public health
18 risks by depositing on site a single portable toilet for use by all residents. The Marinship Park
19 location in contrast is not located adjacent to Richardson's Bay, has conveniently located male and
20 female permanent bathrooms, and for several years has been the solely authorized and logistically
21 feasible location for mobile showers (supported by social service workers) that service the site at
22 least twice a week. (*see* Declarations of Kevin McGowan [Director of Public Works] and John
23 Rohrbacher [Chief of Police]). For these and other reasons, the Center for Disease Control
24 ("CDC") Interim Guidance on Unsheltered Homelessness, Marin County's Risk Reduction Order,
25 and this Court's ruling in *Santa Cruz Homeless Union et al. v. Martin Bernal et al.* (Case No. 20-
26 cv-09425-SVK) ("*Bernal*") cited in Plaintiffs' application in fact support Sausalito's actions here.

27 Public safety officials are afforded substantial judicial deference to make local public
28 safety determinations. *See Yamaha Corp. of America v. State Bd. Of Equalization*, 19 Cal.4th 1

1 (1998). Plaintiffs rely solely upon wholly unsubstantiated claims and assertions of “state-created
2 danger” contained in the declarations of laypersons currently residing in Dunphy Park (*see*
3 Objections to Evidence), none of which are legally sufficient to negate the deference afforded to
4 Sausalito’s local public health and safety determinations, much less satisfy Plaintiffs’ heavy
5 burden of proof in seeking extraordinary injunctive relief. Sausalito thus respectfully requests that
6 the Court deny Plaintiffs’ application for a TRO.

7 **II. FACTUAL BACKGROUND**

8 **A. The Encampment at Dunphy Park**

9 On or around December 28, 2020, an individual set up camping gear and/or assembled
10 makeshift shelter on public right of way property located on Humboldt Avenue just north
11 northeast of 300 Locust Street, immediately east of Dunphy Park. (Declaration of John
12 Rohrbacher [“Rohrbacher Decl.”] at ¶ 4.) Dunphy Park is comprised of approximately 160,000
13 square feet of recreational space with a permanent gazebo structure. (Declaration of Kevin
14 McGowan [“McGowan Decl.”] at ¶ 3-4, Exh. 4.) On the opposite side of the lengthy park from
15 the location of the encampment there are male and female one-stall bathroom facilities that are
16 closed from sunset to sunrise, but there are no showering facilities. (*Ibid.*)

17 The population of the encampment has subsequently increased to approximately twenty
18 persons, many of whom claim to be displaced from their boats where they resided, within
19 Richardson’s Bay Regional Authority (“RBRA”) jurisdictional waters. (Rohrbacher Decl. at ¶ 5-
20 6.) The encampment now includes approximately 23 tents and makeshift shelter structures, heavy
21 furniture, food preparation area with barbeque grills, and other miscellaneous personal property.
22 (*Id.* at ¶ 8, Exh. 9; *see also* McGowan Decl. at ¶ 4.)

23 The current Dunphy Park encampment site poses significant public health and safety risks
24 because there are no conveniently located permanent bathroom facilities or shower facilities.
25 (Rohrbacher Decl. at ¶ 9; *see also* McGowan Decl. at ¶ 5.) Additionally, the site has expanded
26 immediately adjacent to Richardson’s Bay, within the territorial jurisdiction of BCDC. (*Ibid.*;
27 McGowan Decl. at ¶ 6.)

28

1 Moreover, a single, unauthorized portable toilet was deposited at the encampment
2 exacerbating health and safety concerns as it purports to serve the entire encampment community
3 and there are no protocols or procedures in place for City maintenance and cleaning of this
4 temporary facility. (Rohrbacher Decl. at ¶ 10-11.)

5 Due to the lack of accessible facilities at Dunphy Park, individuals from Dunphy Park
6 encampment residents are more likely to disperse amongst the city putting themselves and others
7 at risk of contracting COVID-19. During the early morning hours of February 4, 2021, plaintiff,
8 Robbie Powelson moved his tent and personal belongs from the encampment site to the Bank of
9 America Plaza located at the intersection of Bridgeway and Anchor St. (“Bank of America
10 Plaza”). (Rohrbacher Decl. at ¶ 12.) The Sausalito Police Department removed Mr. Powelson’s
11 belongings from the Bank of America Plaza and he subsequently returned to the Dunphy Park
12 encampment site. (*Ibid.*) On February 4, 2021, Mr. Powelson testified at Sausalito City Council’s
13 remote Town Hall meeting that he had moved his tent and belongings to the Bank of America
14 Plaza in order to be located closer to accessible bathroom facilities. (*Id.* at ¶ 13.)

15 **B. Resolutions Adopted by Sausalito and Proposed Transition of the**
16 **Encampment to Marinship Park**

17 1. *Resolutions Adopted February 5, 2021*

18 On February 5, 2021, a Special Meeting of the Sausalito City Council was conducted
19 telephonically through Zoom and broadcast live on the City's Website (“February 5th Special
20 Meeting”). (Declaration of Heidi Scoble [“Scoble Decl.”] at ¶ 2.) At the February 5th Special
21 Meeting, the City Council voted 4-1 to approve two resolutions regarding homelessness in
22 Sausalito and the tent encampment at Dunphy Park after a 3.5-hour meeting during which nearly
23 40 speakers gave public comment. (*Id.* at ¶ 3, *see* Exhs. 1-2.) The first, Resolution No. 6008,
24 affirms Sausalito’s commitment to “work with our regional and local partners to explore every
25 opportunity to provide shelter and care to those without a home and to treat all individuals
26 experiencing homelessness with compassion and dignity.” (*Id.* at ¶ 3, *see* Exh. 1, p. 2.) The
27 resolution details some of these efforts (such as its participation in the mobile showers offered by
28 the Downtown Streets Team [detailed below], and provision of grab-and-go bags of groceries

1 from the San Francisco-Marin Food Bank during Mobile Shower visits during the pandemic) and
2 its ongoing partnership with the County of Marin, Marin County Health and Human Services, the
3 Marin County Office of Veterans Services, local and regional non-profit organizations, and the
4 faith-based community to provide needed services and find viable alternative shelter for the
5 individuals in the Dunphy Park encampment. (*Ibid.*)

6 The second resolution, Resolution No. 6009, provides that “the Dunphy Park encampment
7 is not an appropriate location because of its proximity to Richardson’s Bay and Dunphy Park and
8 lack of access to restrooms, showers and other sanitary services and thus poses health, welfare and
9 safety risks to the persons living in the encampment and to the environment.” (Scoble Decl. at ¶ 3,
10 Exh. 2, p. 1.) It further states that “Marinship Park, located on Testa Street at Marinship Way, is
11 a more appropriate publically-owned location within the City for overnight sleeping by people
12 without homes who have no option to sleep indoors, due to its access to restrooms, mobile
13 showers, sanitary services, trash collection, and other factors” – this finding is detailed further
14 below. (*Ibid.*)

15 Resolution No. 6009 prohibits daytime camping and storage of personal property on any
16 city property – absent express written authorization by the City Manager or his/or her designee –
17 and prohibits overnight camping and storage of personal property on any city property except for
18 “area(s) of Marinship Park designated by the Interim City Manager or her designee, located on Testa
19 Street at Marinship Way, by persons who have no option to sleep indoors, pending further action by
20 the City Council.” (Scoble Decl. at ¶ 3, Exh. 2, p. 2.) As such, “[a]ll persons camping overnight
21 must remove all camping facilities and personal property from Marinship Park between the hours of
22 thirty (30) minutes after sunrise to thirty (30) minutes before sunset.” (*Id.* at ¶ 3, Exh. 2, p. 2-3.)
23 Resolution 6009 adopts standard operating procedures (“SOP”) for clearing and cleaning
24 encampments and once again affirms Sausalito’s commitment to “to locate shelter beds or other
25 safe living arrangements wherever available for people without homes within its City limits.” (*Id.*
26 at ¶ 3, Exh. 2, p. 1, 3.)

1 Prior to its adoption, Resolution No. 6009 was modified by the meeting minutes to specify
2 that individuals would not be moved from Dunphy Park to Marinship Park until daytime storage
3 lockers were in place at Marinship Park. (Scoble Decl. at ¶ 4.)

4 2. *Marinship Park Provides Better Access to Facilities and Needed Services.*

5 Sausalito’s officials determined that the Marinship Park location is far superior to the
6 current Dunphy Park location. Marinship Park is located adjacent to Marina Plaza and adjacent to
7 Marinship Way in Sausalito, approximately 0.6 miles from Dunphy Park, and comprises
8 approximately 116,305 square feet of recreational space. (McGowan Decl. at ¶ 7-8 and Exh. 5.)
9 Unlike the encampment at Dunphy Park, the proposed relocation site at Marinship Park is not
10 located immediately adjacent to Richardson’s Bay. (*Ibid.*; Rohrbacher Decl. at ¶ 14.) Moreover,
11 Marinship Park contains permanent bathroom facilities in close proximity to the replacement site
12 consisting of two toilets in the women’s restroom, and one toilet and one urinal in the men’s
13 restroom. (*Id.* at ¶ 8, 10 and Exhs. 6a-6e; *see also* Rohrbacher Decl. at ¶ 14.) The Marinship
14 restroom is also open 24 hours a day seven days a week. (McGowan Decl. at ¶ 8.)

15 Additionally, the Downtown Streets Team, a non-profit organization serving the Bay Area,
16 currently provides a mobile showering program (consisting of two mobile shower/restroom
17 trailers) at Marinship Park every Tuesday and Friday from 8:00 a.m. to 10:40 a.m. (Rohrbacher
18 Decl. at ¶ 15; McGowan Decl. at ¶ 9, 11 and Exh. 7.) Marinship Park is the sole authorized and
19 logistically feasible location in Sausalito for Downtown Streets mobile showers program.
20 (Rohrbacher Decl. at ¶ 16.) It is not physically possible to back the trailer into the parking lot at
21 Dunphy Park, nor is there a water hook-up at Dunphy Park which would allow enough water for
22 all individuals desiring a shower to take one. (*Ibid.*; McGowan Decl. at ¶ 9.) Furthermore, the
23 mobile showering program also offers individuals an opportunity to meet with outreach support
24 teams who can enter the individual into the county's Homeless Management Information System
25 (HMIS) and be assessed using the county's vulnerability index service prioritization decision
26 assistance tool (VI-SPDAT) – both of which constitute means to find the individuals permanent
27 housing. (Rohrbacher Decl. at ¶ 17, Exh. 10.) Beneficiaries of the program took 2,342 showers
28 between the start of the program in November 2018 through October 27, 2020 and a whopping

1 1,271 showers were provided in Sausalito during 2020 alone (through October 27, 2020) marking
2 an approximate 30% increase in usage. (*Ibid.*) Additionally, the Downtown Streets Team
3 partnered with the San Francisco-Marin Food Bank to provide an access point for food
4 distribution when the COVID 19 Shelter in Place/Public Health Order started and over 600 meals
5 at the Sausalito Mobile Showers have been distributed (through October 27, 2020). (*Ibid.*)

6 **C. Posting of 72-Hour Notice to Vacate and Attempted Enforcement**

7 Pursuant to Article II, Section B of the SOP approved by Resolution No. 6009, on
8 Tuesday, February 9, 2021, at approximately 5:30 p.m., the City posted Notices to Vacate in
9 visible locations around the Dunphy Park encampment and members of the Sausalito Police
10 Department orally communicated the substance of such notices, to the extent possible, with
11 individuals at the encampment. (Rohrbacher Decl. at ¶ 18, Exh. 11; *see also* Exh. 2a.) The Notice
12 to Vacate advises the public and members of the encampment that the Public Works Department
13 will clear and close the Dunphy Park encampment site at approximately 9 a.m. on Tuesday,
14 February 16, 2021, conditioned on the availability of storage at Marinship Park. (*Ibid.*)
15 Accordingly, Sausalito provided the individuals at the Dunphy Park encampment seven days
16 notice of its intent to clear and close the encampment (as opposed to the 72 hours required under
17 the Standard Operating Procedures). (*See* Rohrbacher Decl. at ¶ 18, Exh. 11.)

18 On Tuesday, February 16, 2021, at approximately 2:00 p.m. PST, City of Sausalito
19 officials attempted to clear and close the encampment at Dunphy Park pursuant to the Notice to
20 Vacate and the Standard Operating Procedures attached to Resolution No. 6009. (*See* Rohrbacher
21 Decl. at ¶ 19.) Members of the Police Department and Public Works spoke with members of the
22 Encampment and the public for approximately two hours. (*Ibid.*) After doing so, it was
23 determined that clearing and closing the Encampment would not be feasible that day because of
24 resistance from those residing at the encampment. (*Ibid.*)

25 **III. STANDARD OF REVIEW**

26 The standard for a TRO is the same as for a preliminary injunction. *See Stuhlberg Int'l*
27 *Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 (9th Cir.2001). A preliminary
28 injunction is an extraordinary remedy never awarded as of right.” *Winter v. Natural Resources*

1 *Defense Council*, 555 U.S. 7, 24 (2008). To obtain a preliminary injunction, a party must establish
2 (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of
3 preliminary relief, (3) that the balance of equities tips in its favor, and (4) that an injunction is in
4 the public interest. *See Winter, supra*, 555 U.S. 7 at 20. As to a likelihood of success on the
5 merits, that factor has been measured in various ways, including “reasonable probability,” “fair
6 prospect,” “substantial case on the merits,” and “serious legal questions . . . raised.” *Lair v.*
7 *Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012). At a minimum, the petitioner must show that there
8 is a “substantial case for relief on the merits.” *Id.* (quoting *Leiva-Perez v. Holder*, 640 F.3d 962,
9 968 (9th Cir. 2011)). Whether to grant or deny a TRO or preliminary injunction is a matter within
10 the court’s discretion. *See Miss Universe, Inc. v. Flesher*, 605 F.2d 1130, 1132–33 (9th Cir. 1979).

11 **IV. ARGUMENT**

12 **A. Plaintiffs’ Complaint is Unlikely to Succeed on the Merits**

13 Plaintiffs’ contention that moving the encampment from Dunphy Park to Marinship Park
14 violates their due process rights under the United States and/or California Constitution lacks merit.
15 *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 548 (2007) (requiring plaintiff to provide more than
16 a conclusion and a “formulaic recitation of a cause of action’s elements”).

17 First, Sausalito has lawfully exercised its police power consistent with constitutional
18 standards. Cities may lawfully regulate the location and timing of outdoor sleeping sites for
19 persons with no options for sleeping indoors. The Ninth Circuit in *Martin v. City of Boise*, 920
20 F.3d 584, 617 (9th Cir. 2019) held that “as long as there is no option of sleeping indoors, the
21 government cannot criminalize indigent, homeless people for sleeping outdoors, on public
22 property, on the false premise they had a choice in the matter.” The Court, however, explained
23 further: “we in no way dictate to the City that it must provide sufficient shelter for the homeless,
24 or allow anyone who wishes to sit, lie, or sleep on the streets...at any time and at any place.”
25 (*Ibid.*) Sausalito’s decision to close City property to daytime camping and transition those with no
26 options for sleeping indoors from Dunphy Park to Marinship Park – while providing storage
27 lockers for overnight essentials – fully comports with *Martin*.

28

1 Second, Sausalito’s actions promote public safety for the residents of the Dunphy Park
2 encampment and the entire community. Sausalito’s actions therefore are consistent with this
3 Court’s Order issued in *Bernal* and the applicable CDC guidelines and Marin County public
4 health orders. (See Request for Judicial Notice [“RJN”] and Exhs. 12-13; see also Exhibit C to
5 Plaintiffs’ *Ex Parte* Application.)

6 In *Bernal*, this Court granted plaintiffs’ application to enjoin the City of Santa Cruz’
7 closure of a 200-person homeless encampment with no proposed alternative location for the
8 residents. The City and County had supported the site as an encampment location for 9 months,
9 during which the City and County supplied hygiene resources and trash services to the site.
10 (Order, p. 3.) Plaintiffs argued that the City’s proposed closure of the encampment would separate
11 the residents from such vital services during the height of Covid-19 conditions. (*Ibid.*). The Court
12 held that Plaintiffs carried their burdens of proof, in part because the residents “would be placed in
13 a more vulnerable situation and in greater danger without access to shelter or services, particularly
14 medical services, showers, and handwashing stations, that they have been receiving at this central
15 location.” (*Id.* at 11.) Additionally, as a Regional Stay at Home Order was in place at the time,
16 the Court clarified that: “[t]he Court finds that this preliminary injunction, tightly tied to the
17 current phase of the COVID-crisis, will benefit the public at large.” (*Id.*, pp. 11, 13.)

18 In contrast to the facts in *Bernal*, the Dunphy Park encampment involves approximately 20
19 persons rather than 200. Additionally, neither Sausalito nor Marin County has endorsed or
20 provided support services to this unauthorized encampment site. Finally, and most importantly,
21 Sausalito’s proposed relocation to Marinship Park provides the residents of the encampment
22 permanent bathroom facilities, access to showers (and social service workers), and trash
23 collection. (See *supra*, pp. 5-6.) Thus, the rationale of the Court’s ruling in *Bernal* strongly
24 supports Sausalito’s actions.

25 Moreover, Sausalito’s actions in as reflected in Resolutions Nos. 6008, 6009 and the SOP
26 are consistent with the CDC guidelines on “Interim Guidance on Unsheltered Homelessness and
27 Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials”
28 published August 6, 2020 (“CDC Guidelines”). (See RJN and Exh. #; see also Scoble Decl. at ¶ 3,

1 Exhs. 1-2a.) Pursuant to the CDC Guidelines, Sausalito has adopted a “community-coalition
2 based” response to the issue, utilizing the efforts of the Mayor, City Council, outreach teams such
3 as Downtown Streets Team, the Marin County Health and Human Services Department,
4 Department of Public Works, and law enforcement. (See CDC Guidelines at p. 2 “Connect to
5 community-wide planning”.) As a result of these efforts, Sausalito has identified a safer
6 alternative site at Marinship Park in the wake of a crisis-level shortage of indoor shelter and long-
7 term housing options, and has conditioned the movement to Marinship Park on providing
8 reasonable locker storage for the individuals for the storage of their overnight essentials. (See
9 CDC Guidelines at p. 2 “Identify additional sites and resources”.) Marinship Park provides better
10 access to much needed resources to prevent the spread of COVID-19, including conveniently
11 located and regularly maintained permanent bathroom facilities and a mobile showering program.
12 (See CDC Guidelines at p. 5 “Considerations for Encampments”.)

13 Additionally, while the Marin County Public Health Order issued October 27, 2020
14 (attached to Plaintiffs’ *Ex Parte* Application as Exhibit C) does not address much less regulate
15 homeless encampments, guidance provided is at least consistent with Sausalito’s actions. For
16 example, Section 8.b recommends in pertinent part: “[f]requently washing their hands with soap
17 and water for at least 20 seconds....” Sausalito’s transition of the homeless encampment to a
18 location with conveniently located permanent bathrooms and mobile shower services thus
19 promotes County health strategies to combat the spread of COVID-19.

20 Plaintiffs’ reliance on the “state created danger” exception to the general rule that the due
21 process clause does not require a government to protect a plaintiff – outlined in *Patel v. Kent*
22 *School Dist.*, 648 F. 3d. 965, is misplaced. Plaintiffs have not, and cannot satisfy their burden of
23 demonstrating that Sausalito has affirmatively placed Plaintiffs “in danger or acts with deliberate
24 indifference to a known or obvious danger.” Nor can Plaintiffs satisfy their burden of proving that
25 Sausalito demonstrated “deliberate indifference” or “a culpable mental state” to meet the
26 “stringent standard of fault” set forth in *Patel. Id., citing, in part, Bryan County v. Brown*, 520
27 US 397, 410 (1997). To the contrary, because of the improved environmental location (not
28 adjacent to Richardson’s Bay) and hygiene and social support services available at Marinship

1 Park, the risk of potentially imminent and irreparable injury to Plaintiffs and the general public is
2 substantially reduced by Sausalito’s actions.

3 Finally, Sausalito’s prohibition of daytime camping is lawful. As noted above, *Martin*
4 extends constitutional protections to overnight camping for homeless persons who have no options
5 for sleeping indoors. Plaintiffs have no constitutional right to establish daytime encampment sites
6 in parks or other public property to the exclusion of other persons’ use of parks and public
7 property. Courts have consistently upheld broadly applicable park closures. *See, e.g., Occupy*
8 *Sacramento v. City of Sacramento*, 878 F.Supp.2d 1110 (E.D. Cal. 2012) (upholding Sacramento’s
9 park closure ordinance); *State v Bailey*, 166 N.H. 537 (2014) (upholding Manchester’s park
10 closure ordinance). Multiple cities have imposed similar restrictions on daytime camping in public
11 property, including (but not limited to) Marysville, Yuba City, Sacramento, and Woodland. (*See*
12 *RJN*, Exhs. 14-17.)

13 **B. Plaintiffs Will Not Be Irreparably Harmed in the Absence of a TRO**

14 Plaintiffs have failed to satisfy their burden to show that they are likely to be irreparably
15 harmed by Sausalito’s actions. Plaintiffs argue that “the current location is critical for the
16 procurement of life sustaining protective gear, food and other supplies.” (Paulson Decl., ¶ 6). But
17 no evidence establishes that such supplies cannot be brought to Marinship Park. Plaintiffs
18 additionally assert that Marinship Park exposes them to toxic air contaminants, and that taking
19 down camping equipment daily may expose campers to heat stroke from walking around all day
20 with their possessions. (*Id.*, ¶¶ 10-11.) These claims, however, are unfounded and speculative
21 (and ignores the storage lockers that Sausalito has voluntarily installed at Marinship). They do not
22 negate Sausalito’s lawful exercise of its police power to move the encampment to a location
23 supported by permanent bathrooms, mobile showers and socials support services, particularly
24 during pandemic conditions. Plaintiffs’ application for a TRO fails for this reason alone. *Alliance*
25 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011) (without a showing of irreparable
26 harm in the first instance, no balancing of remaining factors is permitted).

27
28

1 **C. The Balance of the Equities and Public Interest Weigh in Favor of Dissolving**
2 **the TRO.**

3 When balancing both parties’ harms, the court “should pay particular regard for the public
4 consequences in employing the extraordinary remedy of injunction.” *Winter*, 555 U.S. at 24
5 (2008) (quotation omitted). When the government is the target of the injunction, these factors
6 merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the balance of harms and public interest
7 strongly disfavors an injunction. Sausalito has properly exercised its police power, lawful
8 discretion and expertise in concluding that public safety considerations compel the transfer of the
9 encampment from Dunphy Park to Marinship Park in light of the existence of permanent
10 bathrooms and mobile shower services at Marinship Park, and the Dunphy Park encampment
11 site’s close proximity to Richardson’s Bay. As noted above, courts afford substantial judicial
12 deference to public safety officials to make local public safety determinations. (*See Yamaha*,
13 *supra*, 19 Cal.4th 1; *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water*
14 *Quality Control Bd.*, 210 Cal .App.4th 1255, 1268 (2012); *Harrott v. County of Kings* (2001) 25
15 Cal.4th 1138, 1155; *Guinnane v. San Francisco City Planning Comm.*, 209 Cal.App.3d. 732, 738
16 (1989).)

17 Finally, Plaintiffs’ extreme delay in filing this application supports denial. Plaintiffs
18 attended and spoke at the City County Special Meeting that was held on February 5, 2021 when
19 Resolution No. 6009 was passed – almost two weeks before they filed their *Ex Parte* Application.
20 On February 9, 2021, Plaintiffs’ counsel provided notice of his intent to move *ex parte*. (*See*
21 *Declaration of Anthony D. Prince* filed in support of Plaintiffs’ *Ex Parte* Application at ¶ 2-3.)
22 Later that day, Sausalito posted its Notice to Vacate at the Dunphy Park encampment site on
23 Tuesday, February 16, 2021. (Rohrbacher Decl. at ¶ 18.) Nevertheless, Plaintiffs did not file this
24 application until later afternoon on February 16, several hours after the City commenced efforts to
25 close the Dunphy Park encampment. (*Ibid*; *see also* Notice of *Ex Parte* Application.) Parties
26 spurred on by the threat of an actual immediate irreparable harm must file for a TRO as quickly as
27 possible and delay in requesting a TRO militates against its issuance. *See Rovio Entertainment Ltd.*
28 *v. Royal Plush Toys, Inc.*, 907 F. Supp. 2d 1086 (N.D. Cal. 2012). Here, Plaintiffs clearly did not

