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10 Attorneys for Defendants
City of Novato, et al.

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 MARIN COUNTY HOMELESS
14 UNION, a local affiliate of the
CALIFORNIA HOMELESSNESS
15 UNION, on behalf of itself and those it
represents; CAMP COMPASSION, a
16 Homeless Union-affiliated encampment
in Lee Gerner Park; Individual Plaintiffs
17 JASON SARRIS; LEA DEANGELO;
ZACH BOULWARE; CARRIE
18 HEALON, LISA NICOLE JOHNSON;
DONALD HOBBS; DEBORAH ANN
19 MIROMONTES; LISA JOHNSON;
CHARLES TALBOT; BETHANY
20 ALLEN; MICHELANGELO MONTEZ;
DEBORAH ANN MIRAMONTES;
21 KALANI WELSCH, and other similarly
situated homeless persons including
22 current residents of Camp Compassion
homeless encampment,

23 Plaintiffs,

24 v.

25 CITY OF NOVATO; CITY MANAGER
26 ADAM MCGILL, MAYOR PAT
EKLUND, MAYOR PRO TEM ERIC
27 LUCAN, CHIEF OF POLICE
MATHEW MCCAFFREY, PUBLIC
28 WORKS DIRECTOR CHRIS BLUNK,

Defendants.

CASE NO.: 4:21-cv-05401-YGR

[Assigned to the Hon. Yvonne Gonzalez
Rogers]

**DEFENDANT CITY OF NOVATO'S
SUPPLEMENTAL BRIEF IN
OPPOSITION TO ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION**

Hearing Date: October 6, 2021
Time: 9:00 a.m.
Ctrm: 1

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1 **I. INTRODUCTION**

2 Defendant City of Novato (“City”) submits this supplemental brief to update the
3 Court on the current status of the encampment at Lee Gerner Park and the events that
4 have transpired since the previous hearing. The City further submits a proposed
5 alternative preliminary injunction that has been developed and approved by the City
6 Council to allow campers who refuse an offer of shelter at the New Beginnings Center
7 to remain in Lee Gerner Park in tents purchased by the City in a location prescribed by
8 the City under certain conditions.

9 **II. THE CITY’S LONG-STANDING COMMITMENT TO AIDING**
10 **THE HOMELESS IN NOVATO**

11 The City and Homeward Bound of Marin (“Homeward Bound”), a non-profit
12 organization formed to provide housing, training, and services to the homeless, have
13 worked together to provide transitional housing and services since 1999. 2d Supp.
14 McGill Decl., ¶¶ 2–4. In 2005, the City entered into a ground lease with Homeward
15 Bound authorizing Homeward Bound to construct and maintain the New Beginnings
16 Center, an emergency shelter for up to 80 homeless individuals on land owned by the
17 City. 2d Supp. McGill Decl. ¶ 5. Also in 2005, the City entered into a ground lease with
18 Homeward Bound for the Next Key Employment and Training Center (“Next Key
19 Center”), located next door to the New Beginnings Center. 2d Supp. McGill Decl. ¶ 6.
20 The Next Key Center consists of (1) 32 units of transitional housing, (2) a training and
21 demonstration kitchen, (3) a 150-seat conference and dining room, and (4) space for
22 Homeward Bound’s administrative offices. *Id.* These transitional housing units are
23 made available for homeless people to move from New Beginnings Center to interim
24 housing where they pay a small stipend from the money they earn from job(s) acquired
25 with Homeward Bound’s assistance. *Id.*

26 The City has also supported the creation of subsidized transitional housing that
27 allows homeless individuals to seek to establish an economic base that will allow them
28 to mainstream into market-rate housing and gainful employment. The City entered into

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1 a ground lease with Hamilton Continuum Partners II, L.P. for the purpose of
 2 constructing 60 transitional housing units located in a variety of locations integrated
 3 into one of the residential subdivisions created at Hamilton and, specifically, the
 4 Meadow Park Subdivision. 2d Supp. McGill Decl. ¶ 7. In 2012, the City granted
 5 Homeward Bound the necessary land use entitlements, provided direct financial
 6 assistance and fee waivers, and assisted in the securing of federal funding to construct
 7 a 14-bedroom transitional housing apartment complex for to provide housing to single
 8 parents with children who are coming out of homelessness (“OMA Village”). 2d Supp.
 9 McGill Decl. ¶ 9. In June 2020, the City committed to grant Homeward Bound
 10 \$750,000 to cover development impact fees for an additional 50 transitional housing
 11 units composed of 26 workforce, 1-bedroom apartments, 24 1-bedroom apartments for
 12 veterans, and a commercial kitchen/event space for food industry job training. 2d Supp.
 13 McGill Decl. ¶ 10. All told, the City has provided, funded or approved the construction
 14 of 1,507 affordable housing units throughout the City, and directly manages 600 deed-
 15 restricted affordable rental units. 2d Supp. McGill Decl. ¶ 11.

16 Contrary to Plaintiffs’ perceptions, Ordinances 1669 and 1670 continue the City’s
 17 longstanding commitment to addressing homelessness by easing the existing strict
 18 prohibition on camping in the City’s municipal code. Prior to the adoption of
 19 Ordinances 1669 and 1670, Municipal Code section 14-20.3 (not challenged in this
 20 lawsuit) prohibited camping on **any** public property without a park permit. Ordinances
 21 1669 and 1670 amend the Municipal Code to **permit** overnight camping on public
 22 property so long as the property is not subject to the geographic restrictions in Municipal
 23 Code section 7-11 and 7-12, and there are no available shelter beds to otherwise house
 24 the unhoused. The City’s governing body enacted these changes to acknowledge the
 25 needs of unhoused individuals when all options for housing have been considered and
 26 exhausted. Without these changes the blanket prohibition on camping without a park
 27 permit would remain fully enforceable.

1 As of September 16, 2021, 91% of all Marin County residents over the age of 16
2 are fully vaccinated. 2d Supp. McGill Decl. ¶ 30.

3 **III. CURRENT STATUS OF THE ENCAMPMENT**

4 **A. Campers in Lee Gerner Park**

5 There were eighteen campers present in Lee Gerner Park when the City submitted
6 its Opposition Brief on July 27, 2021. As of the date this Supplemental Brief is filed,
7 there are sixteen campers in the park. 2d Supp. McGill Decl., ¶ 15.

8 The City has reserved fifteen beds at the New Beginnings Center through its
9 contract with Homeward Bound. Dkt. 13-1 [McGill Decl.] at ¶ 2. Since July 27, 2021,
10 the City has successfully referred thirteen people to the New Beginnings Center. Wax
11 Decl. ¶ 11. Four of the campers referred to the New Beginnings Center have now
12 received housing vouchers to assist in finding outside permanent housing subsidized
13 under the federal Section 8 housing program. *Id.* And one person has transitioned to
14 employer-based housing. *Id.* As of September 9, 2021, ten of the City's fifteen beds are
15 occupied. Four beds are immediately available, and one bed is currently unavailable,
16 but will be made available soon. 2d Supp. McGill Decl. ¶ 18. The City has been offering
17 beds to all homeless persons within the City, not just those camping at Lee Gerner Park.
18 2d Supp. McGill Decl., ¶ 17.

19 Eight named plaintiffs in this lawsuit continue to camp at Lee Gerner Park. Those
20 plaintiffs are Carrie Healon, Charles Talbot, Jason Sarris, Kalani Welch, Leah
21 DeAngelo, Zachary Boulware, Michaelangelo Montes, and Lisa Johnson. 2d Supp.
22 McGill Decl. ¶ 19. The remaining three named plaintiffs are no longer residing in Lee
23 Gerner Park. Plaintiff Bethany Allen is now housed in Novato. Plaintiff Donald Hobbs
24 is currently residing at an inpatient detox facility in San Rafael, California. And,
25 Plaintiff Deborah Miramontes has left Novato. The City is informed and believes that
26 she is currently residing in Windsor, California. 2d Supp. McGill Decl. ¶ 20.

27 **B. Plaintiffs' Conduct Following the Modification Hearing**

28 This Court's July 27, 2021, order modifying the temporary restraining order

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1 confirmed that the City could offer campers at Lee Gerner Park, including the Plaintiffs,
 2 referral to the City’s reserved spaces at the New Beginnings Center. Dkt No. 16. The
 3 order further stated that Plaintiffs “shall be prepared to explain any refusal to accept
 4 placement.” Dkt. No. 16 at p. 1, lines 26-27. Subsequently, as a condition of agreeing
 5 to continue the hearing on the preliminary injunction to allow time for settlement
 6 discussions, Plaintiffs’ counsel demanded that the City agree to refrain from contacting
 7 any camper in Lee Gerner Park to offer placement at the New Beginnings Center.
 8 Counsel for the City countered by offering a stipulation whereby the City would refrain
 9 from contacting the Plaintiffs only. The City also reserved the right to arrange placement
 10 for any person who voluntarily approached a City representative requesting shelter.
 11 Plaintiffs’ counsel signed the City’s proposed stipulation. Dkt. No. 23.

12 Although the City agreed to the stipulation to facilitate settlement, Plaintiffs’
 13 counsel’s demands reveal that this case is not about ensuring the safety and security of
 14 the campers in Lee Gerner Park. As of September 9, 2021, the City still had four
 15 immediately available beds that could be offered to campers in Lee Gerner Park. 2d
 16 Supp. McGill Decl. ¶ 18. Once the four campers staying at New Beginnings who have
 17 Section 8 vouchers obtain housing, the City will be able to offer placement at New
 18 Beginnings Center to additional campers in the Park. *Id.* Despite the availability of
 19 shelter beds, Plaintiffs and their counsel have sought to prevent the City from speaking
 20 to any camper about shelter placement, even campers who are not named Plaintiffs and
 21 not directly involved in this lawsuit. See Dkt. No. 23; Supp. Wax Decl. ¶¶ 3, 7.

22 Since the parties stipulated that the City would not contact Plaintiffs to offer
 23 shelter placement, Plaintiffs have sought to exclude the City’s NRT team from so much
 24 as entering Lee Gerner Park and speaking with any camper for any reason. On July 30,
 25 2021, NRT officers entered Lee Gerner Park to assist a camper who had accepted
 26 placement at New Beginnings Center with packing and transporting his belongings.
 27 Supp. Wax Decl. ¶¶ 2–4. While the NRT officers were present, Plaintiff Jason Sarris
 28 approached the officers and demanded that they leave the park, claiming that their

1 presence was a violation of the stipulation. Wax Decl. ¶ 3. This, of course, was not true.
 2 The camper the NRT officers were assisting was not a named plaintiff, and he had
 3 voluntarily requested a placement at New Beginnings Center. Supp. Wax Decl. ¶ 4. No
 4 part of the stipulation prohibited the NRT officers from communicating with or assisting
 5 the camper. See Dkt. No. 23.

6 On August 25, 2021, NRT officers entered the park in search of a person with an
 7 outstanding felony warrant. Supp. Wax Decl. ¶ 5. While in the park, the officers spoke
 8 with two campers (not named Plaintiffs) who requested information from the officers
 9 regarding shelter placement. Supp. Wax Decl. ¶ 6. Mr. Sarris again became aggressive,
 10 demanding that the NRT officers cease speaking to the campers, and even going so far
 11 as to demand that the officers leave the park entirely. Supp. Wax Decl. ¶ 7. This demand
 12 was made despite the fact that the NRT officers were present on police business
 13 unrelated to this lawsuit, an activity expressly permitted by this Court's temporary
 14 restraining order and the stipulation. See Dkt Nos. 16, 23. Mr. Sarris continued to
 15 interfere with the NRT officers, preventing the officers from speaking with a plaintiff,
 16 Ms. Deangelo, on a matter unrelated to shelter or this lawsuit. Supp. Wax Decl. ¶ 8.
 17 Despite Mr. Sarris's interference, the City was eventually able to obtain beds for the two
 18 campers at New Beginnings Center. Supp. Wax Decl. ¶ 10.

19 Plaintiffs' interference with and objection to the NRT officers' contacts with
 20 campers appears to be based on Plaintiffs' belief that all campers within the Park,
 21 whether or not named as an individual Plaintiff, are considered "plaintiffs" here. So far
 22 as the City understands, the basis for this claim is Plaintiff's belief that all campers
 23 within the Park are members of the Marin County Homeless Union. Yet, the only
 24 evidence of membership Plaintiffs have provided is a list of 16 campers, including five
 25 named Plaintiffs, who claim to be members in the "California Homeless Union Novato
 26 Chapter." See Dkt. No. 15 at p. 13. The City assumes that the Marin County Homeless
 27 Union and the California Homeless Union Novato Chapter are intended to be
 28 synonymous, but this lack of consistency only adds to the confusion here. Setting aside

1 the difference between the organization names, the signed list only authorizes the Union
 2 to represent these campers in the lawsuit. It does not purport to list these additional
 3 campers as Plaintiffs.

4 Plaintiffs additionally assert that this case was brought as a class action, and
 5 therefore all campers within the Park are plaintiffs because they are “persons similarly
 6 situated” to the named plaintiffs. However, the Complaint does not meet even the very
 7 minimal pleading standard under the Rules to maintain a class action, as it does not
 8 contain a statement of basic facts to indicate that the requirements of Federal Rules of
 9 Civil Procedure, Rule 23 have been satisfied. *Gillibeau v. City of Richmond*, 417 F.2d
 10 426, 432 (9th Cir. 1969). As pled, this is not a class action.

11 **C. Plaintiffs’ Tour of New Beginnings Center**

12 On August 17, 2021, the City arranged for Plaintiffs’ counsel Mr. Prince, Plaintiff
 13 Jason Sarris, and Marin County Homeless Union representative Robbie Powelson to
 14 tour the New Beginnings Center. 2d Supp. McGill Decl. ¶ 22. The tour lasted for
 15 approximately 90 minutes. During this tour, Mr. Prince, Mr. Sarris, and Mr. Powelson
 16 had the opportunity to view the common areas and dorm rooms, and ask questions of
 17 the Homeward Bound staff. *Id.* Mr. Prince, Mr. Sarris, and Mr. Powelson were
 18 disruptive and demanding during this tour. 2d Supp. McGill Decl. ¶ 23. They demanded
 19 access to areas of the New Beginnings Shelter that are usually available only to
 20 residents, demanded access to Homeward Bound’s private documents, and attempted to
 21 take pictures of residents despite being instructed not to do so. *Id.*

22 Mr. Prince also sought to interview the residents of New Beginnings Center, but
 23 that request was refused by the Homeward Bound staff on privacy grounds. 2d Supp.
 24 McGill Decl. ¶ 24. Although the City has offered to coordinate voluntary interviews
 25 with New Beginnings Center residents, Mr. Prince has not yet offered any proposed
 26 dates for those interviews. *Id.* Mr. Prince has also stated his desire to tour the Kerner
 27 Shelter. 2d Supp. McGill Decl. ¶ 25. Again, the City awaits Mr. Prince’s availability. *Id.*

IV. PROPOSED ALTERNATIVE PRELIMINARY INJUNCTION

The City continues to assert that no preliminary injunction is warranted here for the reasons set forth in the City’s opposition filed July 27, 2021. Dkt. No. 20. Nonetheless, to the extent the Court finds that an injunction is necessary to preserve the status quo, the City offers the following alternative injunction to establish a temporary camp at Lee Gerner Park. This proposed injunction would allow campers to remain in a clearly outlined geographic area within the City-owned portion of the Park (“Temporary Camp”). However, in order to address the City’s significant public safety concerns, the Temporary Camp will be subject to restrictions designed to address the COVID-19 pandemic, ecological and sanitary problems in the Park, and the concerns of local business owners.

Within the designated Temporary Camp area of the Park, the City will do the following:

1. Supply uniform tents to each occupant currently residing in the Park. These tents will be “3 person” tents in size, but intended for no more than one occupant, all of the same color and style chosen by the City. The City will ensure that these tents are of sufficient size to permit a person to stand up while inside the tent.
2. The Temporary Camp will be laid out pursuant to the plan designed by the City’s Public Works Department that includes ADA compliant pathways, COVID-19 compliant physically distanced campsites, and designated eating areas. *See*, Proposed Prelim. Inj., Exh. A [camp layout] (filed herewith).
3. Each occupant of the Temporary Camp will be assigned a uniform designated living and storage area. This area will be sufficiently sized to accommodate the City-provided tent and a reasonable amount of storage as determined and regulated by the City. Residents will not be permitted to exceed their designated living and storage area in the Temporary Camp for health and safety reasons.
4. The number of occupants to be allowed in the Temporary Camp will be limited by the size of the available space in the Temporary Camp and COVID-19

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1 social distance requirements. The current layout plan will accommodate an assigned
 2 space for all known occupants of the Park. However, in order to comply with CDC
 3 recommendations regarding encampments, the City reserves the right to close any
 4 campsites voluntarily vacated by a Temporary Camp resident and refuse to assign that
 5 campsite to a new person not already a resident of the Temporary Camp.

6 5. The Temporary Camp will be enclosed with an 8-foot wood fence for the
 7 privacy of the occupants, safety of all, and to respect the neighboring businesses and
 8 public facilities that adjoin the Park. See Proposed Prelim. Inj. Exh. B.

9 6. For the duration of the preliminary injunction the City will reasonably
 10 provide and pay for the following services at the Temporary Camp as is feasible and in
 11 accordance with existing County and State health requirements and City resources:

- 12 • Security at the site.
- 13 • Handwashing stations, portable bathrooms, and weekly mobile showers;
- 14 and
- 15 • City and County existing “wrap around services” (housing outreach,
 16 health care, etc.).

17 7. To ensure the right of peaceful existence for all residents of the City, the
 18 City has developed a code of conduct for the Temporary Camp that complies with all
 19 existing laws. This code of conduct is based on that approved by the Court in *Santa*
 20 *Cruz Homeless Union v. Bernal*, 2021 WL 1256888, Case No. 20-cv-09425-SVK. See
 21 Proposed Prelim. Inj., Exh. C [Code of Conduct]. The code of conduct will, among
 22 other things, prohibit the use of alcohol or drugs within the Temporary Camp, regulate
 23 noise, and establish a curfew.

24 8. The residents of the Temporary Camp may, of course, come and go
 25 freely. However, no visitors will be permitted within the Temporary Camp. See
 26 Proposed Prelim. Inj., Exh. C [Code of Conduct]. These restrictions are necessary to
 27 prevent the spread of COVID-19, and will also prevent any potential security issues
 28 posed by nonresidents who may enter the Temporary Camp.

1 9. No community donations will be permitted at the Temporary Camp to
2 avoid the risk of spreading COVID-19.

3 **V. CONCLUSION**

4 Plaintiffs have failed to establish irreparable harm or a likelihood of prevailing
5 on the merits of their claim. Nor does the balance of equities favor allowing a small
6 group to monopolize and damage a public park when shelter beds and other, alternative
7 accommodations exist. Nonetheless, the City proposes an alternative preliminary
8 injunction that will preserve the status quo while addressing the City’s most pressing
9 public safety concerns.

10
11 DATED: September 17, 2021

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

/s/ Carmen A. Brock

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CERTIFICATE OF SERVICE

Marin County Homeless Union v. City of Novato, et al.

United States District Court, Northern District

Case No. 4:21-cv-05401-YGR

I, McCall L. Williams, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 East Colorado Boulevard, Suite 850, Pasadena, California 91101. My email address is: MWilliams@chwlaw.us. On September 17, 2021, I served the document(s) described as **DEFENDANT CITY OF NOVATO'S SUPPLEMENTAL BRIEF IN OPPOSITION TO ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION** on the interested parties in this action as follows:

BY ELECTRONIC TRANSMISSION: I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Northern District by using the CM/ECF system on September 17, 2021. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the USDC, Northern District CM/ECF system.

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

Executed on September 17, 2021, at Pasadena, California.

/s/McCall Williams
McCall L. Williams

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