

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing (*Additional statutes unless diversified*):

ACTION: 42 U.S.C. Section 1983

Brief description of cause: Seeking injunctive relief to halt enforcement of anti-unconstitutional camping ordinances.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. **DEMANDS** CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S), IF ANY (*See instructions*): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) **SAN FRANCISCO/OAKLAND** **SAN JOSE** **EUREKA-MCKINLEYVILLE**

DATE July 14, 2021 **SIGNATURE OF ATTORNEY OF RECORD**
 JS-CAND 44 (rev. 10/2020)

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6 **UNITED STATES COURT**

7 **NORTHERN DISTRICT OF CALIFORNIA**

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

18 vs.)

19 CITY OF NOVATO; CITY MANAGER)
20 ADAM MCGILL; MAYOR PAT EKLUND;)
MAYOR PRO TEM ERIC LUCAN; CHIEF)
21 OF POLICE MATHEW MCCAFFREY;)
PUBLIC WORKS DIRECTOR CHRIS)
22 BLUNK and DOES 1-100,)

23 Defendants

Case No.:

**AMENDED EX PARTE APPLICATION
AND COMPLAINT FOR INJUNCTIVE
RELIEF AND A DELARATORY
JUDGMENT PURSUANT TO 42 U.S.C. §
1983, CALIFORNIA CONSTITUTION
ART.1, § 7; 8TH AND 14TH AMENDMENT
TO THE CONSTITUTION OF THE
UNITED STATES;
DECLARATION OF JASON SARRIS;
DECLARATION OF LEAH DEANGELO;
DECLARATION OF CARRIE HEALON;
DECLARATION OF ZACH BOULWARE;
DECLARATION OF FLOJAUNE COFER,
PhD; DECLARATION OF ANTHONY D.
PRINCE; [Proposed ORDER]**

24
25 **INTRODUCTION AND BACKGROUND**

26 1. On June 7, 2021, the City of Novato, California enacted amendments to its
27 Municipal Code prohibiting daytime camping and imposing other restrictions regarding what the
28

1 City terms “critical infrastructure” and its “Stream Protection Zones.” The amended code sections
2 expressly provide that violators will be charged with criminal misdemeanors. Although “neutrally”
3 framed, it is clear that these measures are in fact aimed at the city’s unhoused in general and in
4 particular, approximately 30 unsheltered persons who have created “Camp Compassion” in a
5 section of Lee Gerner Park.

6 2. The amended code sections permit overnight camping on public property but only in
7 those areas not determined by a resolution of City Council to be “critical infrastructure” and provide
8 for misdemeanor criminal charges against violators. However, the definition provided for “critical
9 infrastructure” is so vague and over broad that that virtually any and every public space in the City
10 of Novato can be and likely will be so designated and thereby off-limits to the unhoused.

11 3. While Code Section 14-20.7 permits overnight camping from 9:00 pm until 7:00 am,
12 it does so only if a person is not “engaging in camping as a voluntary act”, which is defined as
13 camping during such time as there are “no beds in any shelter or other accommodation” accessible
14 from the location where a person is camping. There is no definition of “shelter” or “accommodation.”
15 no requirement that the alternative lodging be indoors and constitutionally compliant, as expressly
16 provided under *Martin v. Boise*.

17 4. The City also disregards the command of *Martin v. Boise* regarding the
18 determination of whether or not sufficient alternative shelter is available such that a challenged
19 ordinance is enforceable. That test is not whether a bed is available in any given shelter but whether
20 “there is a greater number of homeless individuals in **a jurisdiction** than the number of available
21 beds [in shelters].” *Martin v. City of Boise*, 920 F.3d 584, 617 (2019) (Emphasis added.) If so, the
22 Court ruled that “the jurisdiction cannot prosecute homeless individuals for involuntarily sitting,
23 lying and sleeping in public.” *Martin v. City of Boise*, 920 F.3d 584, 617 (2019) quoting *Jones v.*
24 *City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006.) At this time there is not a single available
25 shelter bed in either the City of Novato or Marin County, yet violations of the municipal code
26
27
28

1 sections challenged herein are punishable with misdemeanor criminal charges. (See Declaration of
2 Jason Sarris.)

3 5. In addition, should Defendant City of Novato begin enforcement of the challenged
4 ordinances, it will be increasing the risk of harm by way of separation of Plaintiffs from vital
5 services and the natural shade from extreme summer temperatures now available in ‘Camp
6 Compassion’; exposure to infection from the surging Delta variant of the COVID-19 virus,
7 exacerbation of existing physical disabilities, great bodily harm and possible death as Plaintiffs are
8 forced to constantly walk the streets, made to carry or leave behind vital survival items or hide in
9 dangerous locations where there is no relief from the elements.

11 6. Accordingly, individual plaintiffs, homeless Camp Compassion residents **Jason**
12 **Sarris, Carrie Healon, Zach Boulware, Lea Deangelo, Donald Hobbs, Lisa Johnson, Bethany**
13 **Allen**, on behalf of themselves and other similarly situated persons and organizational plaintiff,
14 **Marin County Local of the California Homeless Union** (“Plaintiffs”) bring this emergency
15 action for a temporary restraining order and preliminary injunction against the **City of Novato**, and
16 in their individual and official capacities, respectively, Novato City Manager **Adam McGill**,
17 Director of Public Works **Christopher Blunk**, Chief of Police **Matthew McCaffrey**, Mayor **Pat**
18 **Eklund**, and **DOES 1-100** to enjoin Defendants from enforcing Novato Municipal Code Sections 7-
19 11, 7-12, 14-20.5, 14-20.7 and any other Code Sections that either have the purpose or the effect of
20 criminalizing the homeless based on their status.

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 The Challenged Code Sections

24
25 7. On June 8, 2021, the Novato City Council approved Ordinance Nos. 1669 and 1670,
26 adding the language therein to Novato Municipal Code Sections 7-11 and 7-12, respectively. When
27 the legislation was originally proposed on May 25th, 2021, Plaintiff Jason Sarris, a resident of
28 Camp Compassion and President of the Novato Union of the Homeless, along with other Union

1 officers, addressed City Council objecting that as drafted, the Ordinances were vague, overbroad,
2 ambiguous and if enacted and enforced would lead to serious physical harm to those swept up in its
3 facially unconstitutional proscriptions, including, but not limited to the City's unhoused. Plaintiff
4 Sarris warned the City Council that if approved, the Union would challenge the subject ordinances
5 to legal challenge.

6 8. Also voicing opposition at the May 21, 2021 City Council meeting were attorneys
7 from the Legal Aid Society of Marin County, Leah Deangelo, a resident of Camp Compassion and
8 Robbie Powelson, President of the Sausalito/Marin County Chapter of the California Homeless
9 Union.
10

11 9. Section 7-11.3(a) has now been amended to read as follows:

12 It is unlawful and a public nuisance for any person including persons who would
13 otherwise be entitled to cap on public property pursuant to Section 14-20.8, to camp,
14 occupy camp facilities, or use camp paraphernalia at the following locations:

- 15 1. Critical infrastructure
- 16 2. Within 50 feet of critical infrastructure
- 17 3. Within 50 feet of a vehicular or pedestrian entrance or exit from of [sic] critical
18 infrastructure
- 19 4. On those portions of aa right-of-way that are required by local, state or federal
20 law to be free of obstruction to first responders, including but not limited to
21 members of law-enforcement, fire-prevention, or emergency medical-services
22 agencies
- 23 5. Wildfire risk areas
- 24 6. Youth-serving facilities
- 25 7. Within 50 feet of youth-serving facilities

26 10. "Critical infrastructure" for which no definition was provided in the prior version of
27 Code Section 7-11, is now defined as:

28 "[A]ny real property or facility, whether privately or publicly owned, as designated
by the City Council by resolution, the City Council determines in its discretion is so
vital and integral to the operation or functioning of the city that its damage,
incapacity, or disruption, or destruction would have a debilitating impact on the
public health, safety, or welfare.

Critical infrastructure may include, but is not limited to, government buildings, such
as schools, fire stations, police stations, jails or courthouses; hospitals, antennas,
bridges, roads, train tracks, drainage systems, or levees; or systems, such as

1 computer networks, public utilities, electrical wires, natural gas pipes,
2 telecommunication centers, or water sources”

(Novato Municipal Code Section 7-11.2)

3
4 11. Regarding abatement of violations of the ban on camping on or near “critical
5 infrastructure,” Section 7-11.4 (“Abatement”) reads as follows:

6 “7-11.4 any violation of section 7-11 an/or 7-12 may be abated by the city upon 24
7 hours of prior notice; but a violation of 7-11 and/or 7-12 may be abated immediately
8 by the city without prior notice, if the violation poses an imminent threat to public
9 health or safety... The cost of abatement, including all administrative of costs of any
10 action taken hereunder, may be assessed against the subject premises as a lien, made
11 a personal obligation of the owner, or both, in accordance with procedures in section
12 1-6 of this code. No person shall willfully prevent delay, resist, obstruct, or otherwise
13 interfere with a city official, employee, contractor or agent in their execution of an
14 abatement pursuant to this section”

15
16 12. The challenged revisions are fatally unconstitutional, given the lack of precise
17 definitions, the overbreadth, vagueness and ambiguity of terms such as “interference,” “vital and
18 integral to the operation of the City,” “damage, or incapacity, or disruption, or destruction.” “would
19 have a debilitating impact on the public health, safety, or welfare” that it would be almost
20 impossible for a person to determine where he or she is allowed to camp and where they are
21 prohibited from doing so. Although “neutrally worded” it is manifest that the amended code
22 sections challenged herein will lead to selective enforcement against the unhoused.

23 13. For example, electrical wires cover essentially the entire urban core of the city, as do
24 the subterranean gas pipelines and other concealed components of “critical infrastructure.” In the
25 parcels that do not possess these, in the rural areas or by the creek where Camp Compassion is
26 located, the City’s action in enabling itself to designate a location as a “Wildfire Risk Area” is
27 highly problematic, given that vast portions of the entire region and the State of California are now
28 designated as such. (The permanent displacement and exile of persons from such areas, even if
imminently facing an actual fire, is not something that either Marin County or the State of
California has considered or is now contemplating.)

1 14. Another example of the failure of the amended code sections to put a would-be
2 violator on notice as to what is and is not permitted is the use of the disjunctive “or” to separate the
3 terms “damage,” “incapacity,” “disruption” and “destruction” of alleged items of critical
4 infrastructure. If something is “damaged” but not such that it causes “incapacity” or “disruption,”--
5 i.e, the “damaged” item continues to function -- does the act that allegedly caused the damage
6 actually have a “debilitating impact on public health and safety.” Is the road to be closed because it
7 has a pothole? Should the school be shut down because it has a broken window?

9 15. Indeed, the overbreadth and vagueness of the enactments opens the door to creating
10 increased risks to plaintiffs exiled to the streets. A prohibition on camping near “electrical wires”
11 could mean being forced to camp away from lamp posts and other and well-lit areas, which are a
12 critical deterrent to crime, according to the U.S. Department of Justice’s own study, *Improving*
13 *Street Lighting to Reduce Crime in Residential Areas*. <https://cops.usdoj.gov>. Given that the
14 homeless are already disproportionately victims of street crime, Plaintiffs herein will be subject to
15 this heightened and foreseeable risk of harm if the City is permitted to enforce 7-11.

17 16. Furthermore, with regard to safety, during fire season, when CDC guidance
18 recommends staying in enclosed areas, would make the daytime camping ban physically dangerous.
19 Looking onto the Wild Fire Risk Areas, as well Ordinance 1670 that bans encampments with 50
20 feet of creeks and streams, the ordinance would put people in jeopardy on exceptionally hot days
21 when CDC guidance points to the need for shade, which is generally always present where streams
22 and creeks flow. Moreover, the evaporative cooling that riparian and other wooded habitats provide
23 would no longer be available.

25 17. Thus, the City - without actually describing what the public benefit is - actually puts
26 campers into physical danger and disregards the authoritative guidance of the Center for Disease
27 Control and, by enacting the challenged code revisions, the City not only seeks the destruction of
28 Camp Compassion but has targeted the entire homelessness population of Novato by broadly

1 prohibiting sleeping, camping, and “storage” of personal property in any and all parts of the City
2 designated by the City Council as “critical infrastructure.”

3 18. Plaintiffs have done their due diligence in putting Defendants on notice of their
4 concerns but have been ignored. Prior to enacting the challenged revisions, Defendants ignored
5 detailed public comment during online City Council Meetings by Homeless Union officers and
6 members, including Plaintiff Jason Sarris, as well as a written statement from the National
7 Homeless Law Center. In addition, Defendants refused to come to the camp or meet with campers.
8 Jason Sarris, who has stated on many occasions that he wants to have a place where people can
9 camp and be safe, is actually a member of Marin County's Homeless Planning Steering Committee
10 (lived in seat) as well as a member of the County's Housing Stakeholders Committee. Yet, he has
11 been totally ignored by the Defendant City of Novato. The only official who responded at all was
12 Novato Mayor Pro-Tem Eric Lucan, who met with Plaintiff Sarris the day prior to the unanimous
13 passage of the ordinance. However, came only to inform Mr. Sarris that the proposed ordinances
14 would be approved and the homeless would not be happy about it. See, Declaration of Jason Sarris).

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16
17 19. City Manager, Adam McGill, continues to refuse to meet with Jason Sarris and other
18 camp leaders and has ignored repeated communications from Camp Compassion residents.

19 JURISDICTION AND VENUE

20 20. This is an action for injunctive relief pursuant to 42 USC Section 1983 and F.R. Civ.
21 P. 23(b)(2) based upon ongoing violations violations and imminent harm to persons living at Camp
22 Compassion and in the City of Novato Guaranteed by the First, Fourth, and Fourteenth
23 Amendments of The Constitution of the United States of America and Pandemic related health care
24 orders of the State of California, Marin County, and Novato itself.

25
26 21. Jurisdiction exists because 28 USC Section 1331 and 1343 in that this case is
27 brought pursuant to 42 U.S.C. Section 1983 and raises questions of federal Constitutional Law
28 under the first, fourth, and fourteenth amendment.

PARTIES

Plaintiffs

22. Plaintiff **Marin County Homeless Union** is a local union chapter of the California Homeless Union, an unincorporated membership association which organizes, advocates for and represents unhoused and marginally housed persons. Clearing “Camp Compassion” and other encampments results in dispersal of and harm to Union members and directly interferes with the Union’s mission.

23. Plaintiff **Camp Compassion** is a Homeless Union-affiliated encampment of otherwise unhoused persons in Lee Gerner Park, which manages donations of food, blankets, tents, water, caregiving, and other necessities to its members. Camp Compassion also holds a weekly booth at the Novato Farmer’s Market where members can sell arts and crafts and educate the public about homelessness.

24. Plaintiff **Jason Sarris** is a 57-year-old man who is experiencing homelessness. Jason Sarris is a Homeless Union officer who has taken an active leadership role in the camp and a announced candidate for County Supervisor District 5. He is registered to vote at Lee Gerner Park, in District 1 of Novato’s City Council voting districts. Jason is a skin cancer survivor who continues to suffer from a serious chronic skin condition called x-linked ichthyosis, and an acute back injury. At Camp Compassion he manages these conditions, makes sures campers have tents, blankets, food, and water, as well as works on voter registration and voter education efforts in advance of the 2022 supervisor election.

25. Plaintiff **Lea Deangelo** is 61 years old, and a transgender woman (male to female). For the past 10 years, she has been transitioning from male to female who suffers from a number of physical disabilities. Because of her gender, she has been discriminated against and on the streets been threatened and attacked but finds a level of security at Camp Compassion with proximity to a

1 few trusted friends. She moved to Camp Compassion after Officers Alan Bates, Officer Wax,
2 Officer Mueller impounded her vehicle.

3 26. Plaintiff **Carrie Healon** is a 42-year-old woman who lives at Camp Compassion
4 with her fiancée Plaintiff Zach Boulware. Ms. Healon is a life-long resident of Novato who suffers
5 from severe osteoarthritis that has caused her to have large visible bone spurs on top of her feet that
6 seriously impedes her mobility. She also suffers from a diagnosed overactive thyroid disorder which
7 causes her to faint and puts her at risk for heat stress and heat stroke who is now protected from
8 such exposure in the naturally shaded Camp Compassion.
9

10 27. Plaintiff **Zach Boulware** is a 42-year-old man who lives at Camp Compassion and is
11 the fiancée and caregiver of Carrie Healon, also a named plaintiff. Mr. Boulware suffers from
12 juvenile rheumatoid arthritis which causes him chronic pain and mobility issues. He also suffers
13 from a pinched median nerve in his upper back and shoulder which was the result of a workplace
14 accident that at times causes him to lose feeling and dexterity in his hands, arms, and shoulders. If
15 he is evicted from Camp Compassion, there will be no shelter available to him and his disabilities
16 will be greatly exacerbated if he is forced into the streets.
17

18 28. Plaintiff **Donald Hobbs** is a 65-year-old resident of Camp Compassion. Mr. Hobbs
19 recently became displaced from his longtime home in Novato, where he has been working in
20 construction for 35 years. He is also a former NFL player who played for the Miami Dolphins and
21 Oakland Raiders. Donald suffers from chronic pain and traumatic brain injury in large part because
22 of injuries he sustained in the NFL.
23

24 29. Plaintiff **Lisa Nicole Johnson** is a 33-year-old woman who came to Camp
25 Compassion after being displaced by a traumatic event. She came with nothing, and was provided
26 by the camp with a sleeping bag, tent, food, water, friendship and protection.
27
28

1 **Defendants**

2 30. Defendant **City of Novato** (“City”) is a municipal corporation within Marin County,
3 existing under the laws of the State of California with capacity to sue and be sued.

4 31. Defendant **Adam McGill** is City Manager of Novato

5 32. Defendant **Pat Eklund** is the Mayor of Novato.

6 33. Defendant **Susan Wernick** is a City Council Member of Novato, District 1, and is
7 the elected representative of all members in Camp Compassion who are domiciled in District 1.
8

9 34. Defendant **Chris Blunk** is director of the Department of Public Works one of the
10 departments charged with implementing and enforcement of the challenged ordinances.

11 35. Defendant **Mathew McCaffrey** is Chief of Police of the Novato Police Department
12 charged with implementing and enforcing the challenged ordinance.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 36. Pursuant to Local Rule 65.1(a), plaintiffs respectfully move for a temporary
15 restraining order against Defendants and each of them to halt the expulsion of homeless persons
16 from Camp Compassion where approximately 30 people have been camping for over a year.
17 Specifically, Plaintiffs seek a Temporary Restraining Order and Preliminary Injunction against
18 enforcement, now or at any time after achievement of the City’s declared conditions precedent to
19 enforcement, of Novato Municipal Code Sections 7-11 (Resolution 1669), 7-12 (Resolution 1670)
20 and 1420.7, and thereby prevent Defendants from removing plaintiffs from Camp Compassion and
21 other homeless encampments and essentially prohibiting them from camping anywhere in the City
22 of Sausalito legitimately or illegitimately designated as “critical infrastructure” under the Code’s
23 overbroad and vague definitions.

24 37. A TRO is necessary to prevent irreparable harm to homeless plaintiffs prior to this
25 Court having the opportunity to make a decision on Plaintiffs’ motion for preliminary injunction.
26
27
28

1 other two factors are satisfied.” *Short v. Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (quoting *Alliance*
2 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011.) To determine whether to issue
3 a TRO, the courts in the Ninth Circuit apply the same analysis used to evaluate a motion for
4 preliminary injunction. *McCarthy v. Servis One, Inc.* 2017 U.S. Dist. LEXIS 32622, at 9-10(N.D.
5 Cal. Mar. 7. 2017)

6 42. Here, Plaintiffs *Ex Parte* Application for Injunctive Relief raises serious questions
7 including the legality, under the Federal and California State Constitutions of Defendants’ plan to
8 expel the homeless from Camp Compassion at Lee Gerner Park when its undisputed that there are
9 no shelter beds in the City of Novato.

11 State-Created Danger

12 43. In addition, serious questions arise regarding **state-created danger by way of**
13 **increasing the risk of harm and even death face routinely by homeless persons** deprived of the
14 relative safety of the encampment community and the material support rendered by charitable
15 organizations and individuals.

16 44. While most courts have held that there may be no fundamental right to housing, the
17 Ninth Circuit recognizes liability under substantive due process where a state or local official act to
18 place a person in a situation of known danger with deliberate indifference to their personal or
19 physical safety. *Kennedy v. City of Ridgefield*, 439 F.3d 1055(9th Cir. 2006) “[D]eliberate
20 indifference is a stringent standard of fault, requiring proof that a municipal actor disregard a known
21 or obvious consequence” *Board of County Com’rs of Bryan County, Okl v Brown*, 520 U.S. 397
22

23 45. “In examining whether [the city] affirmatively places an individual in danger, a court
24 does not look solely to the agency of the individual, nor does it rest its opinion on what options may
25 or may not have been available to the individual. Instead, [the court must] examine whether [the
26 city] left the person in a situation that was more dangerous than the one in which they found him”
27 *Kennedy*, 439 F.3d at 1062 (citations omitted) See also. Northern District Judge Susan van Keulen’s
28

1 Order January 20, 2021 granting plaintiffs' Ex Parte Application for Preliminary Injunction in the
2 case of *Santa Cruz Homeless Union et al v. [Santa Cruz City Manager] Martin Bernal, City of*
3 *Santa Cruz, et al Case No. 20-cv-09425-SVK.*

4 46. Here, where it is undisputed that there are no shelters or individual housing options
5 available; where the "option" provided to Camp Compassion and homeless in Novato is to wander
6 the streets during the day, lose access to community donations. The ordinance does not say where
7 people can sleep, only an over broad prohibition on most places.

8
9 47. While California is loosening COVID-19 restrictions, guidance provided the federal
10 Centers for Disease Control (CDC) and repeatedly affirmed since first issued remains the same: "If
11 individual housing options are not available, allow people who are living unsheltered or in
12 encampments to remain where they are. Clearing encampments can cause people to disperse
13 throughout the community and break connections with service providers. This increases the
14 potential for infectious disease spread." (See, Declaration of Flojaune Cofer, PhD, MPH).

15
16 48. In *Marin County Homeless Union v. City of Sausalito*, Case No. 3:21-cv-01143-
17 EMC, Judge Edward Chen enjoined the city from clearing a small homeless encampment in the
18 City's Dunphy Park and from enforcement of a broad ordinance essentially prohibiting camping
19 city wide. He only recently modified the injunction to allow the City of Sausalito to move the camp
20 to a separate and comparable campground with hygiene facilities while still enjoining the City of
21 Sausalito from enforcing its daytime camping ban.

22
23 49. In his modification of the injunction, Judge Chen permitted the moving of the
24 encampment only because campers were to be moved, with their personal possessions, to a similar
25 location with bathrooms and showers, and that only after conducting an evidentiary hearing to
26 satisfy himself that the new location was free of serious health and safety hazards. "The Courts
27 Ruling here is dependent on the City fulfilling all other conditions and safeguards described above.
28 In addition, the Court's ruling here has no impact on the other part of the preliminary injunction

1 related to day camping. That is, the Court continues to enjoin the day camping prohibition” *Marin*
2 *County Homeless Union v. City of Sausalito*, Case No. 3:21-cv-01143-EMC.

3 50. The same is true in *Santa Cruz Homeless Union et al. vs Bernal et al.*, Case No. 5:20-
4 cv-09425, where Judge Susan Van Keulen only granted modification of the injunction when
5 Defendant City of Santa Cruz agreed to move the entire original encampment at the upper portion
6 of San Lorenzo Park to an area only yards away, after the City had conferred with the Santa Cruz
7 Homeless Union.

8
9 51. The City of Novato has no such commitment to a safe move to a comparable site –
10 and is actively opposed to doing so. Their only solution dispersion and criminalization of indigent
11 homeless persons within the city. All of the recent cases in the Northern District, share a common
12 thread: the Courts have ruled that if an encampment is to be cleared, it is to be moved intact and in
13 its entirety to a location with comparable amenities and Cities are still enjoined from enforcing
14 broader city-wide camping bans.

15
16 52. In addition to ongoing concerns regarding COVID-19, including, most urgently and
17 recently the rapid spread of the highly contagious Delta variant, this complaint raises other public
18 health issues are raised about other imminent public health dangers of the ordinance. The amended
19 code sections, if enforced, will lead to homeless people having life sustaining survival items such as
20 food, blankets, shoes, medication, essential documents be taken with little to no warning and
21 disposed of (Ordinance No. 1668 7-11.4.d). Homeless persons will then be charged fines for the
22 cost of the “abatement” and liens set on their property. (Ordinance No. 1668 7-11.4.d).

23
24 53. This, on its face, could lead injury and death to medically vulnerable people
25 experiencing homelessness who will be at great risk of having life sustaining survival items and
26 medication. Loss of blankets and tents could lead to severe unmitigated exposure to the elements
27 (See, Declaration of Flojaune Cofer, PhD, MPH)

1 54. The challenged code sections are indifferent to the environmental realities of living
2 outside as the widely predicted brutal summer has arrived. The Bay Area is in the midst of a
3 summer heatwave and in the midst of fire season. To avoid injury and death, CDC guidance during
4 heatwaves and fire events with smoke dispersal instruct people to stay inside and reduce strenuous
5 activity. (See Cofer Declaration) The City will be putting people into harm's way by forcing
6 campers to move around during the day and break camp during the day.

7
8 55. The vague definition of "fire hazard areas" also means people will be displaced from
9 sheltering in place where there is shade even if they don't possess any kind of flame source.
10 Especially among medically vulnerable people who are unhoused, the ordinance flies in the face of
11 public health to create the possibility of irreparable harm or death through unmitigated exposure to
12 smoke and high heat. Campers who keep camp during the day in shaded areas – following CDC
13 guidance for such events – will risk arrest and destructions of their domiciles, food, water, and other
14 life-sustaining survival items.

15 **Triggering Enforcement: Timeliness of Plaintiffs' Request for Injunctive Relief**

16
17 56. The challenged code sections contain a subsection entitled "Enforcement" which
18 provides that they may be enforced when the sooner of two events take place: either the CDC
19 rescinds its guidance regarding leaving homeless encampments undisturbed or Marin County
20 achieves a COVID-19 fully-vaccinated rate of 90%. However, while citing to the CDC guidelines,
21 the City then disregards the CDC's warning regarding protections for the unhoused, specifically
22 advising "community vaccination coverage should not be used alone to decide to modify
23 approaches to prevention among people experiencing unsheltered homelessness." (See
24 Declaration of Flojaune Cofer, PhD, MPH)

25
26 57. The same CDC statement of June 7, 2021 also states:

27 Closing encampments can lead people to disperse and result in increased
28 crowding at other encampments or in shelters, which can increase the risk of

1 spreading infectious disease, including COVID-19. *Encampment disbursement*
2 *should only be conducted as part of a plan to **rehouse people living in***
3 ***encampments**, developed in coordination with local homeless service*
4 *providers and public health partners. (Emphasis added.) See Cofer*
5 *Declaration*

6 58. It is manifest, therefore, that if not restrained, once enforcement is triggered,
7 the City will be inflicting irreparable harm in the form of increasing the risk of great bodily
8 harm and even death among the homeless population. The challenged code revisions give
9 the City carte balance to label virtually the entirety of Novato to be “critical infrastructure”,
10 off limits to homeless who need to camp both day and night and suffer the myriad harms
11 described in detail in the Declarations filed in support of Plaintiffs’ application.

12 **Balance of Equities and Public Interest**

13 59. Only days ago, in his order enjoining an anti-camping ordinance very similar
14 to the one at issue here, Chief Judge Morrison England of the Eastern District cited to
15 *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073 (9th Cir. 2014), *Preminger v. Principi*, 422
16 F.3d 815 (9th Cir. 2005) and *UFW v. U.S. DOL*, No. 1:20-cv-1690. “When the government
17 is a party to a case where a preliminary injunction is sought, the balance of equities and
18 public interest factors merge.” Judge England continued, “Generally, public interest
19 concerns are implicated when a constitutional right has been violated because all citizens
20 have a stake in upholding the constitution.” (*Warren v. City of Chico*, No. 2:21-cv-00640-
21 MCE-DMC)

22 60. Here, the public interest—which includes the interests of the homeless, who, it
23 is often forgotten, are also members of the public—is clearly served by enjoining
24 enforcement of the City of Novato’s facially unconstitutional code revisions and the
25 increased dangers they will create.

1 **Even if the Court Should Not Find State-Created Danger, the Ninth Circuit’s ruling in**
2 **Martin v. Boise, Alone, Prohibits Enforcement of Novato’s Anti-Camping Ordinances**

3 61. In the above-cited ongoing case of *Warren v. City of Chico*, Chief Judge England
4 also cited to the Ninth Circuit’s historic decision in *Martin Vs City of Boise*, 902 F. 3d 1031, 1046
5 (9 Cir. 2018): “Because the ordinances passed by the [Chico] City Council subject individuals to
6 criminal penalties for ‘living outdoors’ anywhere in the City, the result is that homeless individuals
7 are subject to criminal prosecution no matter where they go within the jurisdiction.” England
8 continues: “This Circuit has previously held that ordinances such as this are unenforceable, unless
9 there is practically available shelter within the City for all unhoused individuals. ‘So long as there is
10 a greater number of homeless in a jurisdiction than the number of available beds [in shelters] the
11 jurisdiction cannot prosecute homeless individuals for “involuntarily sitting, lying, and sleeping in
12 public.” (Quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006)

13
14 62. Here, the City of Novato attempts to avoid *Martin’s* command by driving a Mack
15 Truck and a bulldozer through that part of *Martin v. Boise* which provides that municipalities are
16 not prohibited from imposing restrictions for particular purposes and in particular areas of the City.
17 But the challenged code provisions in this case, enabling Defendant to declare virtually the entire
18 city to be “critical infrastructure” under an outrageously overbroad and vague “standard” is a case
19 of the “exception” swallowing the rule, subverting the essential holding of *Martin* at the expense of
20 and with great risk to the unhoused.
21

22 **FIRST CAUSE OF ACTION**

23 **Cruel and Unusual Punishment; Excessive Fines (Eighth Amendment to the U.S.**
24 **Constitution; 42 U.S.C. §1983; Art. 7) 173.**

25
26 63. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
27 fully set forth herein. The acts and omissions of Defendants, as described herein, violate the
28

1 constitutional rights of Plaintiffs to be free from actual or threatened cruel and unusual punishment
2 and excessive fines.

3 64. By virtue of their status as homeless people, and due to the insufficiency of shelter or
4 housing in the City of Novato, the Plaintiffs have no way to comply with the laws Defendant
5 enacted and continues to enforce against them. The City of Novato has a policy and practice of
6 forcibly removing Plaintiffs who are involuntarily sleeping overnight from public property,
7 including all parks, waterways, and city-owned properties which it has now codified in the amended
8 Municipal Code Sections challenged herein. This has the effect of a citywide ban that does not
9 allow for Plaintiffs to maintain life-sustaining activities that are the unavoidable consequence of
10 being without housing.
11

12 65. Defendants have a custom, policy, and/or practice of encouraging its officers to
13 threaten and to cite or arrest homeless people for sleeping or having property in public, which is
14 unavoidable behavior due to their unhoused status. There is an actual controversy between Plaintiffs
15 and the City of Novato concerning the continued threat of citation and arrest if Plaintiffs remain on
16 public property, in parks, waterways, and other city-owned properties. The City will continue
17 enforcement throughout the city and has a history of issuing citations and making arrests in other
18 areas of the city. Plaintiffs desire a judicial determination of their rights and duties and a declaration
19 as to Defendant's constitutional obligations.
20

21 **SECOND CAUSE OF ACTION**

22 **Cruel and Unusual Punishment (Art. 7, §17 California Constitution)**

23 66. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
24 fully set forth herein. The acts and omissions of Defendants, as described herein, violate the
25 constitutional rights of Plaintiffs to be free from actual or threatened cruel and unusual punishment
26 and excessive fines. By virtue of their status as homeless people, and due to the insufficiency of
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1 shelter or housing in the City of Novato, Plaintiffs have no way to comply with the laws Defendant
2 enacted and continues to enforce against them.

3 67. The City of Novato has a policy and practice of forcibly removing Plaintiffs who are
4 involuntarily sleeping overnight from public property, including all parks, waterways, and city-
5 owned properties. This has the effect of a citywide ban that does not allow for Plaintiffs to maintain
6 life-sustaining activities that are the unavoidable consequence of being without housing. Defendant
7 has a custom, policy, and/or practice of encouraging its officers to threaten and to cite or arrest
8 homeless people for sleeping or having property in public, which is unavoidable behavior due to
9 their unhoused status.
10

11 68. There is an actual controversy between Plaintiffs and the City of Chico concerning
12 the continued threat of citation and arrest if Plaintiffs remain on public property, in parks,
13 waterways, and other city-owned properties. The City has made clear that it will continue
14 enforcement throughout the city and has a history of issuing citations and making arrests in other
15 areas of the City. Plaintiffs desire a judicial determination of their rights and duties and a
16 declaration as to Defendant's constitutional obligations.
17

18 THIRD CAUSE OF ACTION

19 **Right to Due Process of Law: State-Created Danger (Fourteenth Amendments to the U.S.**

20 **Constitution; 42 U.S.C. § 1983)**

21 69. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
22 fully set forth herein.
23

24 70. The City of Novato has a policy and practice of forcibly removing Plaintiffs from
25 encampments in disregard of CDC guidelines pertaining to exposure to COVID-19 as well as heat-
26 related dangers that will be greatly exacerbated if Defendants are permitted to enforce the revised
27 sections of the Novato Municipal Code challenged herein. Plaintiffs will be placed in immediate
28

1 danger to their health and safety by exposing them to the elements, depriving them of their rights to
2 substantive due process guaranteed by the 14th Amendment to the U.S. Constitution.

3 **FOURTH CAUSE OF ACTION**

4 **Right to Due Process of Law: State-Created Danger (Article I, Section 7 of the California
5 Constitution) 186.**

6 71. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
7 fully set forth herein.

8 72. The City of Novato has a policy and practice of forcibly removing Plaintiffs from
9 encampments in disregard of CDC guidelines pertaining to exposure to COVID-19 as well as heat-
10 related dangers that will be greatly exacerbated if Defendants are permitted to enforce the revised
11 sections of the Novato Municipal Code challenged herein. Plaintiffs will be placed in immediate
12 danger to their health and safety by exposing them to the elements, depriving them of their rights to
13 substantive due process guaranteed by Article 1, section 7 of the California Constitution.
14

15 **FIFTH CAUSE OF ACTION**

16 **Unlawful Seizure of Property (Fourth and Fourteenth Amendments to the U.S.
17 Constitution; 42 U.S.C. § 1983)**

18 73. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
19 fully set forth herein.

20 74. The provisions of the challenged revisions to the Novato Municipal Code will permit
21 Defendants to permanently seize, and in some cases, destroy with no genuine opportunity for
22 retrieval, any personal property belonging to Plaintiffs and other unhoused, unsheltered persons. On
23 its face, and if enforced, the enacted prohibitions, policy and procedures regarding camping
24 unreasonable seizures that violate the 4th and 14th Amendments of the United States Constitution.
25

26 **SIXTH CAUSE OF ACTION**

27 **Right to Due Process of Law (Fourteenth Amendment to the U.S. Constitution; 42 U.S.C. §
28 1983)**

- (b) Grant a temporary restraining order, preliminary injunction or permanent injunction immediately enjoining Defendants and each of them from enforcing Sections 7-11, 7-12, 14-20.5, 14-20.7 and all other sections of the revised Novato Municipal Code that have the stated purpose of or will result in the criminalization of the homeless in violation of their above-cited state and federal rights and statutory protections and under the ruling of the Ninth Circuit Court of Appeals in *Martin v. Boise*;
- (c) Order Defendants to strictly observe COVID-19, heat-related and other federal CDC, California Department of Health and Marin County Public Health guidance and orders regarding homeless encampments;
- (d) That this Court retain jurisdiction in this matter;
- (e) That the Court award reasonable attorney's fees to Plaintiffs' counsel;
- (f) Award any further relief the Court deems appropriate.

Dated: July 13, 2021

Respectfully Submitted



Anthony D. Prince
 General Counsel,
 California Homeless Union
 Attorney for Plaintiffs

VERIFICATION

I, Jason Sarris, in my official capacity as an officer of the Marin County Homeless Union declare the following:

The facts alleged in this *Ex Parte* Application are true of my own knowledge except as to those made upon information and belief and, as to such statements, I believe them to be true.

Sworn under penalty of perjury under the laws of the United States of America.

Dated: July 13, 2021

/s/ Jason Sarris

Camp Compassion, Novato, California

1 Anthony D. Prince (SBN # 202892)
2 General Counsel, California Homeless Union/Statewide Organizing Council
3 Law Offices of Anthony D. Prince
4 2425 Prince Street, Ste. 100
5 Berkeley, CA 94705
6 Tel: 510-301-1472
7 E-mail: princelawoffices@yahoo.com

8 Attorneys for Plaintiffs

UNITED STATES COURT

NORTHERN DISTRICT OF CALIFORNIA

9 MARIN COUNTY CHAPTER OF THE
10 CALIFORNIA HOMELESS UNION on
11 behalf of itself and those it represents; JASON
12 SARRIS; LEA DEANGELO; ZACH
13 BOULWARE; CARRIE HEALON; LISA
14 NICOLE JOHNSON; DONALD HOBBS;
15 DEBORAH ANN MIRAMONTES;
16 CHARLES TALBOT, BETHANY ALLEN,
17 MICHELANGELO MONTEZ; KALANI
18 WELCH, and other similarly situated
19 homeless persons including current residents
20 of "Camp Compassion" homeless
21 encampment.

Case No.:

**DECLARATION OF ANTHONY D.
PRINCE IN SUPPORT OF PLAINTIFFS'
COMPLAINT FOR INJUNCTIVE
RELIEF PURSUANT TO 42 U.S.C. § 1983**

22 vs.

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

Defendants

DECLARATION OF ANTHONY D. PRINCE

I, Anthony D. Prince, swear and affirm as follows:

1. I, Anthony D. Prince am General Counsel for the California Homeless Union Statewide Organizing Council and attorney of record for the Marin County Homeless Union in the above-captioned matter.

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2. Attached hereto as Exhibits A and B, respectively, are true and correct copies of Ordinance No.s 1669 and 1670 which were adopted by the Novato City Council on June 7, 2021.
3. Attached hereto as Exhibit C is a true and correct copy of the City's Notice distributed to Camp Compassion on July 6, 2021.
4. Attached hereto as Exhibit D is a true and correct copy of the Cease and Desist Letter and notice of intent to file and Ex Parte Application for Injunctive relief that I sent by email to the Novato City Manager and City Attorney on July 7, 2021, to which I never received a reply.

I swear under penalty of perjury under the laws of the United States that the foregoing is a true and correct statement based on personal knowledge.

Dated: July 13, 2021

Executed at Berkeley, California



Anthony D. Prince

Exhibit A

Exhibit A

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1669

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOVATO
ADDING SECTION 7-11 TO CHAPTER VII OF THE NOVATO
MUNICIPAL CODE REGARDING PROTECTION OF CRITICAL
INFRASTRUCTURE, WILDFIRE RISK AREAS AND YOUTH-
SERVING FACILITIES, AND AMENDING SECTION 14-20
REGARDING UNLAWFUL CAMPING

SECTION I. FINDINGS

The City Council of the City of Novato hereby finds and declares as follows:

WHEREAS, a principal threat to the public health, safety, and welfare is the potential destruction of, damage to, or interference with, infrastructure that is critical to the provision of public services such as law enforcement, fire prevention, educational services, transportation, and utilities including communication, water, and waste disposal; and

WHEREAS, destruction of, damage to, or interference with, critical infrastructure is often caused by fire, contamination, restricting access to such infrastructure by police, fire and other emergency response personnel, or other similar causes; and

WHEREAS, destruction of, damage to, or interference with, critical infrastructure is often caused by persons whose activities are not permitted or authorized in, on, or near critical infrastructure; and

WHEREAS, increased camping activities on public property obscure adverse and illegal activity from public view, contributes substantially to the accumulation of litter, clutter and visual blight, can interfere with pedestrian circulation, can obstruct or interfere with the lawful use of public spaces by the general public for their intended recreational uses, and inhibit the effective regulation and enforcement against illegal activities; and

WHEREAS, the City desires to establish its ability to prevent individuals from camping, occupying camp facilities, or using/storing camp paraphernalia near certain critical infrastructure in order to reduce the risk of destruction or damage to such infrastructure, or interference with the provision of services to and from such infrastructure.

WHEREAS, the City further desires to establish its ability to prevent individuals from camping, occupying camp facilities, or using/storing camp paraphernalia near youth-serving facilities, including child day care facilities, schools, and City playgrounds, in order to protect minor children from potentially deleterious effects of such activities.

NOW THEREFORE, the City Council of the City of Novato does ordain as follows:

SECTION II. Section 7-11 of the Novato Municipal Code titled "Protection of Critical Infrastructure and Wildfire Risk Areas" is hereby added to read as follows:

7-11.1 Purpose and scope

The purpose of this section to mitigate the threat of fire and other potential causes of destruction and damage to and interference with, critical infrastructure, in order to protect the health, safety, and welfare of the public, by authorizing the removal of persons and their personal property in, on, or near critical infrastructure. The purpose of this section is further to protect the health, safety and welfare of minor children while using facilities specifically designed to serve that population.

7-11.2 Regulated areas

When used in this section, the following words and phrases have the following meanings:

Camp has the same meaning as in section 14-20.2 of this Code.

Camp Facilities has the same meaning as in section 14-20.2 of this Code.

Camp Paraphernalia has the same meaning as in section 14-20.2 of this Code.

Critical Infrastructure means any real property or facility, whether privately or publicly owned, as designated by the City Council by resolution, that the City Council determines in its discretion is so vital and integral to the operation or functioning of the city that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare. Critical infrastructure may include, but is not limited to, government buildings, such as schools, fire stations, police stations, jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, drainage systems, or levees; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water sources.

Facility means a building, structure, equipment, system, or asset.

Hazardous Waste has the same meaning as in California Public Resources Code section 40141.

Infectious Waste has the same meaning as in California Code of Regulations, title 14, section 17225.36.

Wildfire Risk Area has the same meaning as in California Code of Regulations, title 24, part 9, section 202.

Youth-Serving Facility means child day care facilities, public or private preschool, public or private primary or secondary school, public or private college and/or university, and public or private playgrounds.

7-11.3 Prohibited activities and conditions

- a. It is unlawful and a public nuisance for any person, including persons who would otherwise be entitled to camp on public property pursuant to Section 14-20.8, to camp, occupy camp facilities, or use camp paraphernalia at the following locations:

1. Critical infrastructure;

2. Within 50 feet of critical infrastructure;
 3. Within 50 feet of a vehicular or pedestrian entrance to or exit from critical infrastructure;
 4. On those portions of a right-of-way that are required by local, state, or federal law to be free of obstruction to first responders, including but not limited to members of law-enforcement, fire-prevention, or emergency-medical-services agencies; or
 5. Wildfire risk area.
 6. Youth-serving facilities.
 7. Within 50 feet of youth-serving facilities.
- b. It is unlawful and a public nuisance for any person, including persons who would otherwise be entitled to camp on public property pursuant to Section 14-20.8, to store personal property, including camp paraphernalia and camp facilities, in the following locations without the written consent of the property owner:
1. Critical infrastructure:
 2. Within 50 feet of critical infrastructure;
 3. Within 50 feet of a vehicular or pedestrian entrance to or exit from of critical infrastructure;
 4. On those portions of a right-of-way that are required by local, state, or federal law to be free of obstruction to first responders, including but not limited to members of law-enforcement, fire-prevention, or emergency-medical-services agencies; or
 5. Wildfire risk area.
 6. Youth-serving facilities.
 7. Within 50 feet of youth-serving facilities.
- c. This section is not intended to prohibit overnight camping on private residential property by friends or family of the property owner.
- d. Nothing in this section is intended to prohibit or make unlawful the activities of an owner of private property or other lawful user of private property that are normally associated with and incidental to the lawful and authorized use of private property for residential or other purposes; and nothing is intended to prohibit or make unlawful the activities of a property owner or other lawful user if such activities are expressly authorized by this Code or other laws, ordinances, and regulations.

7-11.4 Abatement

- a. Any violation of sections 7-11 and/or 7-12 may be abated by the city upon 24 hours of prior notice; but a violation of sections 7-11 and/or 7-12 may be abated immediately by the city without prior notice, if the violation poses an imminent threat to public health or safety.
- b. Abatement pursuant to subsection a., above, may include, but is not limited to: removal of camp facilities, camp paraphernalia, personal property, garbage, hazardous waste, infectious waste, junk, or debris; and securing the perimeter of the property with fencing, gates, or barricades to prevent further occurrences of the nuisance activity.
- c. Regardless of the city's authority to conduct abatement pursuant to this section, every owner, occupant, or lessee of real property, and every holder of any interest in real property, is required to maintain the property in compliance with local, state, and federal law; and is liable for violations thereof.
- d. The cost of abatement, including all administrative costs of any action taken hereunder, may be assessed against the subject premises as a lien, made a personal obligation of the owner, or both, in accordance with procedures in section 1-6 of this code.
- e. No person shall willfully prevent, delay, resist, obstruct, or otherwise interfere with a city official, employee, contractor or agent in their execution of an abatement pursuant to this section.

7-11.5 Violations

Any violation of this section shall be punishable as a misdemeanor in accordance with section 1-5 of this Code and shall be deemed a public nuisance. Nothing in this section shall prevent the city from initiating a civil or administrative action, or any other legal or equitable proceeding, to obtain compliance with the provisions of this section. The remedies provided by this section are intended to be alternative methods of obtaining compliance and/or discouraging noncompliance with the provisions of this section and are expressly intended to be in addition to any other civil, criminal, or administrative remedies provided by law, including, but not limited to, Penal Code sections 602 and 647.

SECTION III. Sections 14-20.5 and 14-20.6 of the Novato Municipal Code are hereby renumbered as Sections 14-20.6 and 14-20.7, respectively.

SECTION IV. Section 14-20.5 of the Novato Municipal Code is hereby added to read as follows:

14-20.5 Fires on public property. It is unlawful and a public nuisance for any person to do the following on any public property:

- a. Light or maintain any fire, unless such fire is lighted and maintained only in an apparatus or receptacle (including a fire pit, stove, barbeque or fire circle) provided by, owned, or maintained by the City of Novato for that particular purpose.

- b. Leave a fire unattended by an adult or leave a location where a fire has been started, kindled and/or maintained until the fire has been completely extinguished and is cold to the touch.

SECTION V. Section 14-20.7 of the Novato Municipal Code is hereby renumbered as Section 14-20.8 and is amended to read as follows:

Nothing in this section shall prohibit any person from camping on public property between the hours of 9 p.m. and 7 a.m. when all of the following circumstances are present:

- a. At the time that the person is camping there are no beds in any shelter or other accommodation for homeless persons within the City or otherwise reasonably accessible from the place where that person is camping that are available to that same person; and
- b. The person is not engaging in camping as a voluntary act. Under this section "voluntary act" shall mean camping during such time as there is shelter or lodging available to that person which that person willfully refuses to avail him/herself of for any reason unrelated to the exercise of a First Amendment or other state or federal constitutional right.

SECTION VI. CEQA

This Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA) and the State CEQA Guidelines and it has been determined that approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions without any physical project being approved, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION VII. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION VIII. ENFORCEABILITY OF ORDINANCE

In light of the existing COVID-19 public health emergency, this Ordinance shall not be enforced to clear encampments existing as of the Effective Date of this Ordinance until the earlier of the following:

- 1. The Centers for Disease Control and Prevention amends or revokes its Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Official to no longer recommend local agencies allow individuals living unsheltered or in encampments to remain where they are.

2. COVID-19 vaccinations are accessible for individuals experiencing homelessness, at least 90 percent of County residents 16 year and older have been fully vaccinated, as defined by the California Division of Occupational Safety and Health, and the County meets the State of California requirements for the Yellow (Minimal) Tier in place as of May 25, 2021.

SECTION IX. CITY MANAGER TO PROMULGATE RULES AND REGULATIONS

The City Manager is hereby authorized to promulgate rules and regulations to implement this Ordinance.

SECTION X. PUBLICATION AND EFFECTIVE DATE

This ordinance shall be published in accordance with applicable provisions of law, by either:

publishing the entire ordinance once in a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption,

or

publishing the title or appropriate summary in a newspaper of general circulation, published in the City of Novato, at least five (5) days prior to adoption. and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance.

This ordinance shall become effective 30 days after the date of its passage and adoption.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was first introduced at a regular meeting of the Novato City Council on the 25th day of May, 2021, and was passed and adopted a regular meeting of the Novato City Council on the 8th day of June, 2021, by the following vote, to wit:

AYES: Councilmembers Athas, Peele, Wernick, Lucan, Eklund
NOES: Councilmembers None
ABSTAIN: Councilmembers None
ABSENT: Councilmembers None

Pat Eklund
Mayor of the City of Novato

Attest:
Laura McDowall
City Clerk of the City of Novato

Approved as to form:

/Jeff Walter/

City Attorney of the City of Novato

Exhibit B

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1670

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NOVATO ADDING SECTION 7-12 TO CHAPTER VII OF THE
NOVATO MUNICIPAL CODE REGARDING CONDUCT IN THE
STREAM PROTECTION ZONE

SECTION I. FINDINGS

The City Council of the City of Novato hereby finds and declares as follows:

WHEREAS, the City has a substantial interest in ensuring the protection, maintenance, enhancement and restoration of streams and riparian areas, which includes ensuring they are adequately protected from activity which might have a substantial negative impact on natural resources and the environment, and in ensuring the city's ability to comply with its statutory, regulatory and permitting obligations with respect to creeks and riparian areas; and

WHEREAS, the City's General Plan places strong emphasis on the "protection, maintenance and enhancement of Novato's natural resources..." including its creeks and riparian areas; and

WHEREAS, the City has established a Stream Protection Zone under Novato Municipal Code Chapter 19.35, which area includes the stream bed, the stream banks, all riparian vegetation and an upland buffer zone at least 50 feet wide on both sides of the stream, and establishes special requirements for development and land uses within the Stream Protection Zone; and

WHEREAS, the City now desires to further regulate individual conduct within the Stream Protection Zone which might have a negative impact on the City's natural resources and environment, including camping, urinating and defecating, and disposal of garbage in creeks and riparian areas.

NOW THEREFORE, the City Council of the City of Novato does ordain as follows:

SECTION II. Section 7-12 of the Novato Municipal Code titled "Creeks, Tributaries and Riparian Areas" is hereby added to read as follows:

7-12.1 Purpose

- a. This section shall govern individual conduct within the Stream Protection Zone, as established and defined in Division 19.35 of this Code, whether occurring on public or private property.
- b. The public health, safety, and welfare, as well as the City's ability to comply with its statutory, regulatory and permitting obligations with respect to the protection of its creeks, tributaries, riparian corridors and associated natural resources, require that the City adopt and enforce comprehensive regulations specifically prohibiting deleterious activities within these areas, whether located on public or private property.

- c. The purpose of this section is to establish clear and direct requirements for the inspection and maintenance of the areas governed by this section and to authorize City enforcement of violations of the provisions of this section by individuals engaging in prohibited activity and/or property owners permitting prohibited activities or conditions to occur or be maintained on their properties.

7-12.2 Prohibited activities and conditions

It shall be unlawful and a violation of this section for any person to engage in or maintain, or for any property owner to allow or maintain, any of the following activities or conditions in the Stream Protection Zone:

- a. Collecting, gathering, or disturbance of any natural or cultural resources, except for pruning, removal of materials or any other activities authorized under appropriate permits from state and/or federal agencies or in conjunction with permitted city-sponsored activities.
- b. Camping, occupying camp facilities, or using camp paraphernalia.
- c. Entering into or remaining within property to which public access is prohibited or restricted.
- d. Driving or otherwise operating a vehicle, except as authorized in conjunction with otherwise permitted activity.
- e. Using bicycles in areas not expressly designated for bicycle use.
- f. Possessing or consuming alcoholic beverages.
- g. Disposing of, depositing, throwing, keeping or accumulating trash, litter, rubbish, rubble, garbage, debris or other solid waste, dirt, green waste or animal waste.
- h. Traveling outside of designated paths.
- i. Posting any sign on a tree, tree-stake or guard, or fastening any wire, cable or rope to any tree, tree-stake or guard unless otherwise authorized by the city.
- j. Urinating or defecating.
- k. Making any excavation or unauthorized encroachment.
- l. Possessing or discharging of weapons, firearms, paintballs, fireworks, or building fires, except a fire lighted and maintained only in an apparatus or receptacle (including a fire pit, stove, barbeque or fire circle) provided by, owned, or maintained within a park by the City of Novato for that particular purpose.
- m. Any act in a regulated area constituting a violation of any provision of California Endangered Species Act, Endangered Species Act, the California Public Resources Code, or any regulation of the California Department of Fish and Game, or of any permit or approval issued by any federal, state or local agency having jurisdiction over the regulated area shall also be a violation of this section.

This section is intended to regulate individual conduct within the Stream Protection Zone. Nothing in this section is intended to alter, supplant or overrule the rules and regulations set forth for development and land use within the Stream Protection Zone under Division 19.35 of this Code, or to prohibit any activities lawfully permitted therein.

7-12.3 Violation and Abatement

Any violation of this section shall be punishable as a misdemeanor in accordance with section 1-5 of this Code and shall be deemed a public nuisance. Nothing in this section shall prevent the City from initiating a civil or administrative action, or any other legal or equitable proceeding, to obtain compliance with the provisions of this section. The remedies provided by this section are intended to be alternative methods of obtaining compliance and/or discouraging noncompliance with the provisions of this section and are expressly intended to be in addition to any other civil, criminal, or administrative remedies provided by law, including, but not limited to, Penal Code sections 602 and 647.

Any violation of this section may be abated pursuant to the provisions described in section 7-11.4 of this Code.

7-12.4 No liability on the city

Nothing in this section shall be deemed to impose any liability upon the City or upon any of its officers or employees, nor to relieve the owner or occupant of any private property from the duty to keep property in a safe condition.

SECTION III. CEQA

This Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA) and the State CEQA Guidelines and it has been determined that approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions without any physical project being approved, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION IV. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION V. ENFORCEABILITY OF ORDINANCE

In light of the existing COVID-19 public health emergency, this Ordinance shall not be applied to prohibit camping or to clear encampments existing as of the Effective Date of this Ordinance until the earlier of the following:

1. The Centers for Disease Control and Prevention amends or revokes its Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Official to no longer recommend local agencies allow individuals living unsheltered or in encampments to remain where they are.
2. COVID-19 vaccinations are accessible for individuals experiencing homelessness, at least 90 percent of County residents 16 year and older have been fully vaccinated, as defined by the California Division of Occupational Safety and Health, and the County meets the State of California requirements for the Yellow (Minimal) Tier in place as of May 25, 2021.

SECTION VI. CITY MANAGER TO PROMULGATE RULES AND REGULATIONS

The City Manager is hereby authorized to promulgate rules and regulations to implement this Ordinance.

SECTION VII. PUBLICATION AND EFFECTIVE DATE

This ordinance shall be published in accordance with applicable provisions of law, by either:

publishing the entire ordinance once in a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption,

or

publishing the title or appropriate summary in a newspaper of general circulation, published in the City of Novato, at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance.

This ordinance shall become effective 30 days after the date of its passage and adoption.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was first read at a regular meeting of the Novato City Council on the 25th day of May, 2021, and was passed and adopted a regular meeting of the Novato City Council on the 8th day of June, 2021, by the following vote, to wit:

AYES: Councilmembers Athas, Peele, Wernick, Lucan, Eklund
 NOES: Councilmembers None
 ABSTAIN: Councilmembers None
 ABSENT: Councilmembers None

/Pat Eklund/

 Mayor of the City of Novato

Attest:

 /Laura McDowall/
 City Clerk of the City of Novato

Approved as to form:
/Jeff Walter/

City Attorney of the City of Novato

Exhibit C

NMC

CITY OF NOVATO MUNICIPAL CODES

NMC 14-20.5 FIRES

No person shall light or maintain any fire unless the apparatus is provided by the City of Novato for that particular purpose.



CITY OF NOVATO
CALIFORNIA

NMC 7-11 CAMPING AND STORAGE NEAR CRITICAL INFRASTRUCTURE



- Government Buildings
- Utility Facilities
- Health Facilities as defined by 1250 H&S
- Train Stations and Train Tracks
- Water Sources and Levees
- Roads and Bridges along City Evacuation Routes
- Wildfire Risk Areas
- Youth Serving Facilities

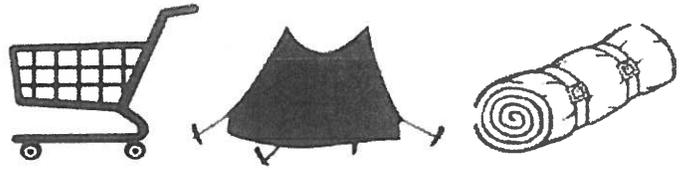
No camping and no storage of property within 50 feet of areas defined as Critical Infrastructure by the City of Novato Municipal Code 7-11. This includes the entrance to such facilities.

NMC 14-20.7

Prohibits camping and camping paraphernalia within a city park from 7 AM to 9 PM

Exhibit D

California Homeless Union Statewide Organizing Council



Office of the General Counsel, Law Offices of Anthony D. Prince
2425 Prince Street, Ste. 100, Berkeley, CA 94705
E-mail: princelawoffices@yahoo.com Phone: 510-301-1472

July 7, 2021

Adam McGill,
Novato City Manager
Jeffrey A. Walter,
Novato City Attorney
City of Novato Administrative Offices 922
Machin Ave.
Novato, CA 94945

Via Regular and Electronic Mail

Re: Cease and Desist and Notice of *Ex Parte* Application

Dear Mr. McGill and Mr. Walter:

This office represents the California Homeless Union/Statewide Organizing Council. Our Marin County local union represents our homeless members in that part of Lee Gerner Park known as "Camp Compassion." You are hereby advised of the following:

1. Yesterday, July 6, 2021, notices were distributed in Camp Compassion containing extremely brief and selective portions of recently enacted amendments to the Novato Municipal Code regarding restrictions on camping. (A copy of the Notice is attached to the Email message containing this letter.)

While the notices do not list potential legal consequences for violation of these sections, the posting of the notices is clearly designed to create the impression that the cited code sections are currently in effect. As such, the posting of the notices is a violation of the cited code sections themselves, which expressly recite that enforcement cannot begin until either 1) the CDC rescinds its guidance regarding the clearing of homeless encampments or 2) Marin County achieves a COVID-19 fully vaccinated rate of 90%. Neither of these conditions precedent to enforcement have been satisfied.

Therefore, we advise the City to cease and desist from any further such postings, distribution of notices or communications of any kind to the residents of Camp Compassion or anywhere else in the City of Novato that either expressly state, infer or could be reasonably interpreted to suggest that NMC Sections 7-11, 14-20.5 or 14-20.7 are currently in effect and need to be obeyed.

Furthermore, we strongly urge that the City notify those to whom it has distributed the notices that at this time they need not obey the restrictions on camping and will not be cited nor charged should they remain where they are presently camped.

2. This is to further advise that whether or not the City complies with the above cease and desist demand, this office will, as soon as possible, file an *Ex Parte* Application for an injunction prohibiting the enforcement at any time of the NMC Code Sections 7-11, 14-20.5 and 14-20.7 and a declaratory judgment that the code sections as amended are facially unconstitutional and a violation of the Ninth Circuit's decision in *Martin v. Boise*.

Very truly yours,

/s/Anthony D. Prince,
General Counsel,
California Homeless Union

1 Anthony D. Prince (SBN # 202892)
2 General Counsel, California Homeless Union/Statewide Organizing Council
3 Law Offices of Anthony D. Prince
4 2425 Prince Street, Ste. 100
5 Berkeley, CA 94705
6 Tel: 510-301-1472
7 E-mail: princelawoffices@yahoo.com

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- 1 -

6 Attorneys for Plaintiffs

UNITED STATES COURT

NORTHERN DISTRICT OF CALIFORNIA

9 MARIN COUNTY CHAPTER OF THE)
10 CALIFORNIA HOMELESS UNION on)
11 behalf of itself and those it represents; JASON)
12 SARRIS; LEA DEANGELO; ZACH)
13 BOULWARE; CARRIE HEALON; LISA)
14 NICOLE JOHNSON; DONALD HOBBS;)
15 DEBORAH ANN MIRAMONTES, LISA)
16 JOHNSON, CHARLES TALBOT,)
17 BETHANY ALLEN, MICHELANGELO)
18 MONTEZ, KALANI WELCH, and other)
19 similarly situated homeless persons including)
20 current residents of "Camp Compassion")
21 homeless encampment,)

Case No.:

**DECLARATION OF JASON SARRIS IN
SUPPORT OF PLAINTIFFS'
COMPLAINT FOR INJUNCTIVE
RELIEF PURSUANT TO 42 U.S.C. § 1983**

17 vs.

18 CITY OF NOVATO; CITY MANAGER)
19 ADAM MCGILL; MAYOR PAT EKLUND;)
20 MAYOR PRO TEM ERIC LUCAN; CHIEF)
21 OF POLICE MATHEW MCCAFFREY;)
22 PUBLIC WORKS DIRECTOR CHRIS)
23 BLUNK, ET AL.)

21 Defendants

DECLARATION OF JASON SARRIS

25 I, JASON SARRIS, hereby swear and affirm that the following is a true and correct
26 statement.

27 1. My name is Jason Sarris. I am a 52-year old resident of Camp Compassion, a
28 homeless encampment located in Lee Gerner Park in the City of Novato.

Declaration of Jason Sarris

1 2. I suffer from a hereditary disease called X-linked ichthyosis that is a chronic skin condition,
2 the most noticeable result of which is that my skin has a dry, scaly appearance and texture.
3 which blocks the pores and nerves of my skin. This means that I do not produce adequate
4 sweat when it is hot, and that my skin also does not have the same “thermostat” ability to
5 regulate the temperature of my body. (Attached hereto as Exhibit A is a true and correct
6 copy of a photograph depicting my skin condition.) If I have to leave Camp Compassion,
7 where we have natural protection from the heat and prohibited from camping elsewhere
8 during the day, I will be at great risk for over-heating and heat stroke. Because of this, living
9 under shade and near access to water is absolutely essential to my survival.
10

11 3. As an officer and lead organizer in Novato for the Marin County Local of the California
12 Homeless Union, I am aware that there are far more homeless in Marin County and the City
13 of Novato than there are available shelter beds. The results of the most recent “point-in-
14 time” survey in 2019 showed that there are at least 1,034 homeless persons in Marin County.
15
16

17 4. Beginning on June 18, 2021, I began contacting all known shelters in the area including
18 New Beginnings Shelter at 1399 N. Hamilton Parkway in Novato, Kerner Street Shelter in
19 San Rafael, Homeward Bound on Mission Avenue and Mill Street in San Rafael with the
20 results that no beds were available. In my research and actual phone calls to other shelters, I
21 determined that there are only 42 shelter beds available for all of Marin County; currently,
22 none available any day of the week at this time.
23

24 5. Camp Compassion has functioned and continues to function, as a centralized location where
25 a wide variety of churches, local business, schools, community organizations, individuals
26 and non-profits concerned with the survival of the homeless can donate vital necessities such
27
28

1 as food, water, clothing, tents, sleeping bags, hygiene products and other vital support.

2 These include, but are not limited to the following:

3 Community Action of Marin
4 Legal Aid of Marin
5 Wilson & Kim Orthodontics;
6 Panera Bread
7 Rotary Club of Tiburon
8 Belvedere Rotary Club of Tiburon Sunset
9 Juntxs For Change Faith Services
10 Street Chaplaincy Of San Rafael
11 Lighthouse Christian Church
12 Novato United Methodist Church
13 Quest Church
14 Jennifer Mallow
15 Ilya K. Titterton
16 Jeremy & Amy Portje
17 Sarah Jane Charleton
18 Rachael Karlin
19 Karen Rawson
20 Noah Mohan
21 Shay Sun (Life Coach
22 Mary C Linhart
23 Maria Perrin
24 Cindy Siciliano
25 Anna-Marie Licata Combs
26 Bambi Corless Klyse; Monica Tmartella
27 Megan Brizzilara
28 Star Elizabeth Miller.

6. If the camp is closed and we are dispersed throughout the City and forced to be constantly on the move due to the daytime camping ban, the above-named supporters will not be able to find us to provide the vital support we need to survive.

7. I cannot imagine the debilitating impact the new camping ordinances will have on my life. I have x-linked ichthyosis which is a rare skin disorder. My skin grows incredibly fast and my skin doesn't shed on its own meaning, my skin grows scales that cover my pores making it hard for me to sweat. (Attached hereto as Exhibit A is a true and correct copy of a photograph depicting the above-described physical disability.)

1 8. With extra layers of skin on my body I do not have an internal thermostat and have to work
2 extra hard to warm up and more importantly I have an extremely difficult time cooling off. I
3 need to be hydrated and in the shade and will not be able to do that if I am forced to break
4 down my tent every day and carry it around, along with 5 gallon jugs of water, during the
5 day in the heat of the summer. I also a basal cell carcinoma skin cancer survivor, which is
6 malignant. I had a large portion of my chin taken out in June of 2019. Being out of the sun
7 is critical to the health of my skin because basal cell carcinoma has a chance to reoccur once
8 you have it.

9
10 9. I am now on the Marin County's Homeless Planning Steering Committee (lived in seat) and
11 I am on the County's Housing Stakeholders Committee. I have announced my candidacy for
12 District 5 (Novato) Marin County Supervisor in the 2022 General Election. The
13 announcement of my candidacy has been publicly noticed by newspaper reporters in the
14 Marin Independent Journal and Press Democrat. I am registered to vote in Novato.
15 Enforcement of the new ordinances would severely limit my physical ability to conduct my
16 election campaign and thereby interfere with my right to vote and to seek elective office.
17

18
19 10. I am the camp leader and I have built a great community with the help of the residents in
20 Novato who care. Kelli Smith from the Novato Farmers Market has given Camp
21 Compassion a booth at the market for the summer, to help educate the public about
22 homelessness and to sell our art and wares. What I have been able to cultivate this last year
23 with getting donations and support from the community is nothing short of phenomenal. It
24 gives me hope that there is a better way to handle the homeless situation in Novato, rather
25 than criminalizing homelessness with a misdemeanor.
26

27 11. Our camp resides downtown in a walk-through park next to the public library and a few
28 businesses. All our camp wants is a safe place to sleep at night, without harassment we have

1 received from some in the community and now with the threat of criminalization from the
2 City of Novato.

3 12. We asked the City of Novato to provide us with an alternative campsite. On May 18, 2021, I
4 sent an email to the City Council and invited the members to come to our camp and meet
5 everyone. I wanted to talk to them about our camp's success stories and showcase some of
6 the skill sets that some of our camp members have. City Council Member Eric Lucan was
7 the only one who got back to me. We met on the day before the city council was going to
8 vote on the new camping ordinances that were unfortunately voted in unanimously on June
9 8th. Eric Lucan told me on the June 7th meeting with him that there are going to be people
10 in our camp that are not going to be happy and there are residents and business owners that
11 are not going to think the city did enough with the new camping ordinances.

12
13 13. Basically, I tried unsuccessfully to reach out to the City of Novato and when I was finally
14 able to meet and talk with someone from the city (Eric Lucan), They (Eric Lucan) told me
15 the writing was on the wall with the new camping ordinances passing.

16
17 14. Very few people in Camp Compassion have been offered or have received a COVID-19
18 vaccination. There have been only two times that a mobile vaccination facility has come to
19 the Novato library which is adjacent to the camp, May 6th and June 29th. Many here are
20 afraid to leave the camp to get a vaccine because they fear leaving their belongings and
21 having them seized by police or others. We have members here who are physically unable to
22 go to the library or other location even if a mobile vaccination unit was present. For
23 example, Zach Boulware because of a debilitating cellulitis infection he has on both of his
24 feet. Neither the City of Novato County has ever come and offered transportation to a
25 vaccination site or even provided information about the vaccinations. For this reason, there
26 are campers who are apprehensive about getting vaccinated, or lack Identification
27 documents and fear they will be refused a vaccine.
28

1 15. Attached hereto as Exhibit B is a series of photographs depicting Camp Compassion.

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

5 Dated: July 11, 2021

6 Executed at Novato, CA
7

8
9 _____
/s/ Jason Sarris
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Exhibit A



Exhibit B









--
Gender pronouns He/Him/They



Amenities

From: Robbie .Powelson (robbiepowelson@gmail.com)

To: princelawoffices@yahoo.com; spacin101@gmail.com

Date: Monday, July 5, 2021, 01:20 PM PDT



1 Anthony D. Prince (SBN # 202892)
2 General Counsel, California Homeless Union/Statewide Organizing Council
3 Law Offices of Anthony D. Prince
4 2425 Prince Street, Ste. 100
5 Berkeley, CA 94705
6 Tel: 510-301-1472
7 E-mail: princelawoffices@yahoo.com

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- 1 -

6 Attorneys for Plaintiffs

7 **UNITED STATES COURT**

8 **NORTHERN DISTRICT OF CALIFORNIA**

9 MARIN COUNTY CHAPTER OF THE)
10 CALIFORNIA HOMELESS UNION on)
11 behalf of itself and those it represents; JASON)
12 SARRIS; LEA DEANGELO; ZACH)
13 BOULWARE; CARRIE HEALON; LISA)
14 NICOLE JOHNSON; DONALD HOBBS;)
15 DEBORAH ANN MIRAMONTES;)
16 CHARLES TALBOT, BETHANY ALLEN,)
17 MICHELANGELO MONTEZ; KALANI)
18 WELCH, and other similarly situated)
19 homeless persons including current residents)
20 of "Camp Compassion" homeless)
21 encampment,)

Case No.:

DECLARATION OF FLOJAUNE COFER, PhD, MPH, IN SUPPORT OF PLAINTIFFS' COMPLAINT FOR INJUNCTIVE RELIEF PURSUANT TO 42 U.S.C. § 1983

17 vs.

18 CITY OF NOVATO; CITY MANAGER)
19 ADAM MCGILL; MAYOR PAT EKLUND;)
20 MAYOR PRO TEM ERIC LUCAN; CHIEF)
21 OF POLICE MATHEW MCCAFFREY;)
22 PUBLIC WORKS DIRECTOR CHRIS)
23 BLUNK, ET AL.)

21 Defendants

24 **DECLARATION OF FLOJAUNE COFER, PhD, MPH**

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

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

1 Michigan, and completed a Doctorate Degree in Epidemiology from the University of Michigan in
2 2010.

3 2. I am currently employed by Public Health Advocates, where I hold the position of
4 Senior Director of Policy. My responsibility is to lead our state and local advocacy efforts to
5 research, develop and pass legislation that fosters health equity, promotes social justice, and
6 expands opportunity for communities facing the greatest barriers to wellbeing. Since the outbreak of
7 the COVID-19 pandemic, we have been focused on both the physiological and mental health
8 impacts on the most marginalized populations, including the homeless, of this disease and have
9 been closely following the nature and progress of the various vaccines that slowly becoming
10 available to this segment of the community.

11 3. I have reviewed the recent amendments to the Novato Municipal Code. If enforced,
12 these measures will put the unhoused community, particularly those currently encamped at Lee
13 Gerner Park, at great risk of harm, particularly from the rapidly spreading and highly contagious
14 Delta variant of the coronavirus. This concern is shared by the Centers for Disease Control (CDC),
15 which updated its guidance as recently as June 6, 2021, leaving intact its proscription against the
16 clearing of homeless encampments. (Attached hereto as Exhibit A is a true and correct copy of the
17 CDC's Update of June 7, 2021.)

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

22 5. I have reviewed the amendments to the Novato Municipal Code, focusing on Section
23 7-11 which sets forth the conditions under which the City can begin enforcement. These criteria are
24 contrary to the very CDC guidelines that are relied upon in 7-11, itself. The Code sets forth that
25 enforcement may only begin when either 1) the CDC rescinds its guidance or, alternatively or 2)
26 when all Marin County reaches an overall fully-vaccinated rate of 90%.

27 6. However, in its most recent update of June 7, 2021, the CDC states:
28

1 “Increasing COVID-19 vaccination coverage in the surrounding community is
2 important to help reduce community transmission, but community vaccination
3 coverage *should not be used alone* to decide to modify approaches to prevention
4 among people experiencing unsheltered homelessness.”

(June 7, 2021 CDC update. Emphasis added.)

5 Thus, by using the goal of a 90% county-wide vaccination rate alone in permitting enforcement
6 based on the community vaccination coverage alone as one of two possible events to trigger
7 enforcement, the City of Novato disregards these guidelines in precisely the manner warned against
8 by the CDC, i.e., it considers *only* the community vaccination rate, without regard to consideration
9 or even determination of the actual circumstances of the homeless community, itself.

10 7. As the availability of COVID-19 vaccines has increased and pandemic related
11 restrictions have been eased, those in my field have become concerned that the particular
12 circumstances facing most vulnerable sub-populations, including the unhoused, may be disregarded.
13 This concern extends to the Centers for Disease Control which two weeks ago issued updated
14 guidelines advising a go-slow, measured approach. Specifically, the CDC’s June 7, 2021 update
15 leaves unchanged specific guidance advising against the clearing of homeless encampments.

17 8. I am concerned that to date, neither City nor County health officials have been able
18 to provide specific information as to the rate of vaccination against COVID-19 among its homeless
19 community members, a key factor in the CDC’s guidance regarding the easing of infectious disease
20 policies. Currently, Marin County is reporting an overall county rate of 73% fully-vaccinated,
21 meaning that 73% of Marin County residents have been fully vaccinated (received all required
22 inoculations and have completed the two week period required thereafter.). Marin County COVID-
23 19 Vaccinations | Marin County Coronavirus Information (marinhhs.org)

25 9. If Marin County reaches the 90% vaccinated rate that the City of Novato has
26 identified as a trigger for enforcement of its general daytime camping ban without having made any
27 particularized assessment of the rate of vaccination of the unhoused and other closely-related health
28

1 issues, it will in my professional opinion, greatly increase the risk of harm to this already immune-
2 compromised population.

3 10. In addition to these concerns, the CDC, as well as Dr. Anthony Fauci, head of the
4 U.S. National Institutes of Allergy and Infectious Disease, have recently issued warnings regarding
5 the rapidly spreading, highly contagious and lethal Delta variant of the coronavirus. The Delta
6 variant is, to quote Dr. Fauci during a recent meeting of the White House Coronavirus Response
7 Team, “the greatest threat in the U.S. to our attempt to eliminate COVID-19.” The Delta variant is
8 especially dangerous for marginalized communities and those who already have compromised
9 immune systems and are, generally, in poor health, an undisputed characteristic of the homeless
10 community. Jaso

11
12 11. Compounding the still-existing dangers to the unhoused still posed by the pandemic
13 is a summer that has already brought record-breaking extreme heat. Extreme heat can lead to
14 extreme sweating, and with that loss of fluid comes dehydration. Heat exposure can also lead to
15 hyperthermia, which occurs when the body becomes so dangerously hot that sweating cannot cool it
16 down. These risks will be greatly exacerbated if the homeless at Lee Gerner Park are forcibly
17 removed and dispersed into the streets of Novato as access to water, hygiene, shade and the
18 proximity of other campers will be lost.

19
20 12. In conclusion, the above-described dangers posed by the substantially more
21 contagious, transmissible and potentially lethal Delta variant in California, the emerging concerns
22 regarding post-vaccination re-infection, “long haul” side effects, the extreme temperatures and risk
23 to those who are on the street without shelter of hypothermia, dehydration, heat stress and heat
24 stroke and the separation of the homeless from vital services, it is my professional medical opinion
25 that the enforcement of the amended code sections, regardless of when that may begin, will greatly
26 heighten the risk of serious bodily harm or even death as described above.
27
28

1 13. I have attached hereto as Exhibit A, a true and correct copy of official CDC
2 guidelines, updated as recently as June 6, 2021 advising against clearing encampments and warning
3 that the overall community rate of vaccination *should not* be the sole criteria for determining the
4 status of the unsheltered, which is exactly the warning that the City of Novato is ignoring by
5 intending to enforce its camping ban and begin breaking up encampments as soon as Marin County
6 as a whole reaches a 90% fully-vaccinated rate.

7
8 14. I have also attached hereto as Exhibits B through E a number of newspaper stories
9 and other materials in the public record regarding the dangers of the surging Delta variant and the
10 physiological dangers confronting the homeless in a summer of extreme temperatures.

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

14 Executed at Sacramento, California.
15 July 9, 2021



16
17
18 Flojaune G. Cofer, PhD, MPH

Exhibit A

Considerations for a Long-Term Infection Prevention Strategy for People Experiencing Unsheltered Homelessness

When community COVID-19 transmission levels change, some communities might consider when to modify the COVID-19 prevention measures described above. Below are several factors to consider before modifying community-level COVID-19 prevention approaches for people experiencing unsheltered homelessness, for example, changing outreach team procedures or approaches to COVID-19 prevention in encampments. These factors should be considered together; no single factor should be used alone to decide changes in approach.

These factors should be discussed with local public health partners, community homeless service providers, and people with lived experience of homelessness. Any modifications to COVID-19 prevention measures should be conducted in a phased and flexible approach, with careful monitoring of COVID-19 cases in the community. Connecting people experiencing homelessness to permanent stable housing should continue to be the primary goal.

Community Transmission Levels: *What is the incidence of COVID-19 in the community?*

The incidence of COVID-19 in the community will influence the risk of infection for people experiencing unsheltered homelessness. The CDC COVID Data Tracker has a [tool](#) that displays the current level of community transmission at the county level.

Increasing [COVID-19 vaccination coverage](#) in the surrounding community is important to help reduce community transmission, but community vaccination coverage should not be used alone to decide to modify approaches to prevention among people experiencing unsheltered homelessness.

Vaccination Levels: *What proportion of people experiencing unsheltered homelessness in the community have been vaccinated against COVID-19?*

Vaccination significantly decreases the likelihood of becoming infected with the virus that causes COVID-19. Refer to the [Interim Public Health Recommendations for Fully Vaccinated People](#) for the most up-to-date information on individual-level modifications to prevention measures for people who are fully vaccinated. People experiencing unsheltered homelessness who are fully vaccinated do not need to wear masks unless they are accessing services in a homeless service facility. Although we know vaccines help protect individuals, there is not enough information available yet to determine a level of vaccination coverage needed to modify community-level COVID-19 prevention measures.

Note: Vaccination status should not be a barrier to accessing homeless services. COVID-19 vaccinations should not be mandatory to receive homeless services unless required by state or local health authorities.

Availability of Housing: *What is the housing availability in the community?*

Any modifications to approaches to encampments or people experiencing unsheltered homelessness should be conducted with an awareness of housing availability and homeless service capacity. Closing encampments can lead people to disperse and result in increased crowding at other encampments or in shelters, which can increase the risk of spreading infectious disease, including COVID-19. Encampment disbursement should only be conducted as part of a plan to rehouse people living in encampments, developed in coordination with local homeless service providers and public health partners.

Even if the community decides to modify some infection prevention measures for people experiencing unsheltered homelessness, continue to maintain the following key components of a sustainable approach to disease prevention and response.

1. Monitor community transmission of COVID-19 in the area. For the latest updates on county-level transmission of the virus that causes COVID-19, use this CDC COVID Data Tracker [tool](#).
2. Create flexible quarantine and isolation locations that are scalable, in case the number of COVID-19 cases in the community increases.
3. Keep a minimum set of public health prevention and control procedures in place at all times, including
 - a. Working together with community organizations to improve sanitation in encampments.
 - b. Ensuring access to handwashing facilities and supplies.
 - c. Providing place-based, regular health evaluations and linkages to medical care, including access to COVID-19 vaccination, routine vaccinations, and behavioral health services.

Exhibit B

MOST POPULAR

- 1. Billionaire Warren Buffett Predicts New Pandemic Worse Than Covid-19**
- 2. The South Pacific islands you should visit instead of Hawaii**
- 3. San Francisco is forever dying**
- 4. 'Elin Pea Hun**



Next Up: Billionaire Warren Buffett Predicts New Pandemic...

News // COVID-19

Dozens of unvaccinated Marin residents infected in Delta variant outbreaks



Amy Graff, SFGATE

Updated: June 24, 2021 8:58 a.m.



SAN FRANCISCO MAZDA 2021 MAZDA CX-5 1.9% APR 2021

SEASON OF DISCOVERY

MAZDA CX-5 MAZDA CX-5 MAZDA CX-5

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Dozens of unvaccinated Marin residents infected in Delta variant outbreaks



Marin County announced Tuesday the region has seen two recent outbreaks tied to the highly contagious Delta variant.

Dozens of unvaccinated people were infected, but the situation would have been more severe if the county didn't have a highly successful vaccine effort. This week, Marin reached the milestone of 90% of eligible residents receiving one or more doses. The county has the highest vaccine rate in the Bay Area.

"With 90% of the population vaccinated, these outbreaks were limited," said Marin Health Director Dr. Matt Willis. "In the past these could have easily triggered surges that would have continued to grow. Instead, they were by and large surrounded by individuals who are protected and so the outbreaks died. This is what community immunity is. It's encouraging to see the protection the vaccine is offering. It's also a caution that those who are unvaccinated remain vulnerable with the Delta variant circulating."

The first outbreak occurred in the adjacent towns of San Anselmo and Fairfax where 30 COVID-19 cases were reported, all in unvaccinated individuals who were eligible for inoculation. One patient infected with the Delta variant was hospitalized and recovered. While the county didn't identify the specific variant in every case, those that were sequenced showed the Delta strain.

The second outbreak rose in June from a school in Novato where 25 cases were identified, with some in unvaccinated children who aren't eligible for the vaccine due to their age.

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"It was centered in the school, and then in people who were connected to the school through sports programs or social networks," said Willis.

Both outbreaks were controlled within 14 days and are no longer active, the county said.

"It offers a glimpse of what the next stage of this pandemic will look like with variants spreading among unvaccinated groups," said Willis. "How widely it spreads is dependent on the number of people in the community who are vaccinated."

He added, "When clusters of cases rise and fall quickly among unvaccinated people, and don't really spread further, this is what herd immunity looks like. We're seeing what community immunity could look like in Marin. The current cases are among unvaccinated residents, which is why we're motivated to get closer to 100%."

The Delta variant, which is more infectious and potentially more deadly than other variants, now represents more than 20% of coronavirus infections in the U.S. in the last two weeks, or double what it was when the Centers for Disease Control last reported on the variant's prevalence.

Dr. Anthony Fauci, the nation's top infectious disease expert, warned that the U.S. could be following the United Kingdom's course, where the variant has become the dominant strain due to rapid spread among youth. Fauci said indications are

that the COVID-19 vaccines remain effective against the variant. The B.1.617.2 variant was first identified in India.

In Marin, 70% of cases that have been sequenced in the past month were the Delta variant.

"The takeaway is that this variant really has legs," Willis said. "It does move quickly when it finds groups of unvaccinated people. Fortunately, in Marin that number is very small."

The Associated Press contributed to this story.

Exhibit C

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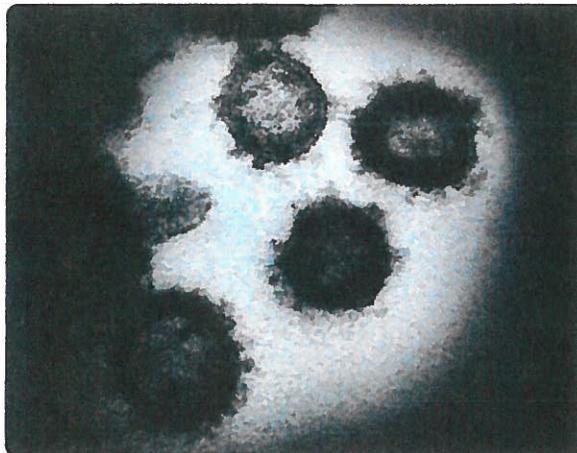
Los Angeles Times

Highly contagious Delta coronavirus variant spreading fast in California



Rong-Gong Lin II, Luke Money, Alex Wigglesworth

Sun, June 27, 2021, 12:31 PM · 5 min read



This transmission electron microscope image shows the coronavirus that causes COVID-19. (National Institute of Allergy and Infectious Diseases, Rocky Mountain Laboratories)

TRENDING

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strain to people who have not been vaccinated against COVID-19.

The variant makes up 14.5% of California coronavirus cases analyzed so far in June, up from 4.7% in May, when it was the fourth-most identified variant in California, according to data released by the California Department of Public Health.

Experts say the Delta variant poses a greater chance of infection for unvaccinated people if they are exposed. The variant, first identified in India, may be twice as transmissible as the conventional coronavirus strains. It has been responsible for the rise in cases recently in India, the United Kingdom and elsewhere.

But vaccinated people are well protected against infection and illness from the Delta variant. One recent study found that the full two-dose course of the Pfizer-BioNTech vaccine was 88% effective against symptomatic disease caused by the Delta variant and 96% protective against hospitalization.

There is no widespread scientific consensus on whether the Delta variant is more likely to cause more serious illness than other strains.

Delta's rise comes as California's dominant strain, Alpha, first identified in the United Kingdom, may have peaked.

In May, the Alpha variant made up 58.4% of coronavirus cases that were analyzed in California. Alpha's share fell in June, now making up 37.7% of analyzed cases — still the top variant but with a much smaller proportion.

The Gamma variant, first identified in Brazil, is also being seen more often in California. In May, the variant represented 10.1% of analyzed cases. It



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Associated Press

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Los Angeles County, the nation's most populous, has confirmed 123 Delta variant cases — 49 of them among residents of Palmdale and Lancaster. Fourteen cases of the Delta variant were in people from a single household.

L.A. County data suggest that vaccines are still overwhelmingly effective in protecting people against the Delta variant, as well as other known variants.

Of those 123 confirmed cases of the Delta variant in the county, 89% occurred among people who were not vaccinated against COVID-19, and 2% among those who were partially vaccinated.

No one has died from the Delta variant in L.A. County.

The few fully vaccinated people who have been infected with the Delta variant "experienced relatively mild illness," L.A. County Public Health Director Barbara Ferrer said.

Almost everyone who has died in L.A. County of COVID-19 has been unvaccinated.

Data released by the county showed that 99.8% of COVID-19 deaths from Dec. 7 to June 7 occurred among unvaccinated people.

Cases, Hospitalizations, and Deaths by Vaccination Status in LAC
December 7, 2020 – June 7, 2021

	Cases		Hospitalizations		Deaths	
	#	%	#	%	#	%
Vaccinated	1,881	0.4%	171	1.3%	19	0.2%
Unvaccinated	434,951	99.6%	12,707	98.7%	17,215	99.8%
Total	436,832	100%	12,878	100%	17,234	100%

covid19.lacounty.gov 6/24/2021

Cases, hospitalizations and deaths by vaccination status in L.A. County (June 24, 2021)

"If you are fully vaccinated, you have a lot of protection," Ferrer said, adding that for the "very



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How Australia's strict Covid defences were breached by the delta variant

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unvaccinated people.

The results of outbreaks of the Delta variant elsewhere also support the vaccines' effectiveness. In Israel, an outbreak of the Delta variant is "driven primarily by the unvaccinated," tweeted Dr. Ashish Jha, dean of the Brown University School of Public Health.

Some vaccinated people in Israel are still getting infected "because no vaccine is 100%," Jha wrote. But the infections that are breaking through the immunity provided by the vaccines are causing mild disease.

"What's happening in Israel is vaccines working exactly as we all expected," Jha wrote.

In South Africa, President Cyril Ramaphosa on Sunday announced a sweeping set of new coronavirus restrictions, including curfews and school closures, as the country faces another surge in cases that threatens to outpace two previous spikes. The Delta variant, first discovered in India, appears to be driving South Africa's new increase, Ramaphosa said.

South Africa recorded more than 15,000 new coronavirus cases Sunday, including 122 deaths, bringing its total number of fatalities to nearly 60,000.

Meanwhile, data released by California show that the percentage of the tested population who have antibodies to the coronavirus — a sign of immunity to COVID-19 — is also increasing.

From May 16 to June 12, 85.9% of Californians who were tested for coronavirus antibodies had them — a promising sign of growing immunity, either because of immunization or past exposure to the virus. That's up from 76.6%, calculated during a four-week period in May.



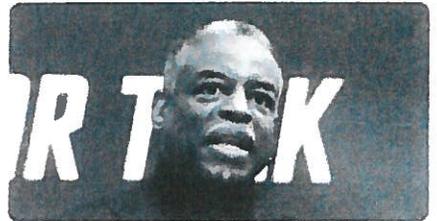
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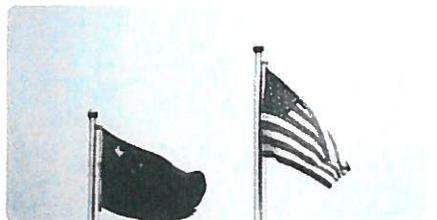
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interrupts the sustained transmission of the virus.

Officials are continuing to urge everyone to be vaccinated against COVID-19, including people who survived a previous infection. Experts say immunity provided by the vaccination is more robust and longer-lasting than immunity from an infection.

The highly infectious Delta variant is making the task of getting to herd immunity more difficult.

With conventional coronavirus strains, it could take perhaps 71% of the population to be immune for a region to reach herd immunity and interrupt the virus' transmission, said Dr. George Rutherford, a UC San Francisco epidemiologist. But a variant such as Delta — because it is so transmissible — would increase that threshold to, say, 84%, he said.

The Delta variant is also spreading nationwide.

From May 9 to May 22, the Delta variant made up less than 3% of analyzed coronavirus samples nationwide. But from June 6 to June 19, that proportion rose to more than 20%.

Dr. Anthony Fauci, the U.S. government's top infectious-disease expert, called the strain "currently the greatest threat in the U.S. to our attempt to eliminate COVID-19."

This story originally appeared in Los Angeles Times.



Homeless Quarterback Finds a Home With His Coach
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Exhibit D

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47 test positive for delta variant at Sonoma County's largest homeless center in Santa Rosa



SLIDE 1 OF 4

Forty-seven people have been quarantined in the annex/tent after being diagnosed with the delta variant of COVID-19 at the Sam Jones Hall for the homeless in Santa Rosa on Tuesday, July 6, 2021. (John Burgess / The Press Democrat)



ETHAN VARIAN

THE PRESS DEMOCRAT

July 8, 2021, 8:27PM | Updated 11 minutes ago

A total of 47 residents at the Sam Jones L. Hall homeless shelter in Santa Rosa have tested positive for the delta variant of the coronavirus, making up about three-quarters of a recent spike in COVID-19 cases among Sonoma County's homeless population, officials said Thursday.

The outbreak at the county's largest shelter comes amid a broader uptick in local COVID-19 cases and hospitalizations, predominantly among unvaccinated people.

Jennielynn Holmes, who leads homeless services at Catholic Charities, the nonprofit managing the shelter, said latest outbreak is only the second time the coronavirus has been detected at Sam Jones, following a smaller cluster of cases in January during the peak of the pandemic.

"The delta variant is reacting with the homeless population much differently than the original COVID situation," Holmes said. "We had very few cases for the entire pandemic."

In this latest outbreak, almost a third of the 153 residents currently staying at the shelter have now tested positive.

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Countywide, 62 homeless people have tested positive within the past two weeks, according to Kathryn Pack, a manager for the county health department's epidemiology team. That's a 48% jump in the homeless population's total COVID-19 caseload, which now stands at 191 since the start of the pandemic.

The recent surge means about 7% of the roughly 2,700 homeless people in the county have contracted the virus, mirroring the share of positive tests among the overall county population.

The shelter outbreak reflects an emergent trend at this point in the pandemic: The recent upswing of coronavirus cases in Sonoma County, as elsewhere, is predominantly affecting people who have not been fully vaccinated — a pool of about 110,000 individuals locally, or about 25% of the vaccine-eligible population.

Homeless people have been among the hardest to reach in the monthslong inoculation campaign. No records exist to say how many remain unvaccinated, authorities said.

And homeless individuals are at particularly high-risk of becoming critically ill with COVID-19 since they are more likely to have underlying health issues. At Sam Jones, just one homeless resident has been hospitalized, Holmes said, and no one else with a positive test has severe symptoms.

The majority of residents who tested positive had not received COVID-19 vaccines, Holmes said.

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Still, at least 10 of the 47 positive cases were among those who were fully vaccinated, a concerning sign as studies show the delta variant is more transmissible and may be more resistant to vaccines than the original strain of the virus.

Approximately 85% currently staying at Sam Jones have been vaccinated, Holmes said.

Sonoma County Health Services and St. Joseph Health have tested all residents and staff at the shelter. There are still 23 pending tests, and the city expects to have results by this week.

The nonprofit is quarantining those who test positive in its 60-bed annex, which it completed in January. Residents who return a negative test or are still awaiting results are staying in the 150-bed main hall.

Holmes said all residents are encouraged to stay put during the outbreak and that no one who has tested positive or is waiting on results has left the shelter.

Health officials have started contact tracing efforts, and testing will continue at the shelter about once a week to manage any potential spread.

Sam Jones will pause accepting new residents for at least two weeks after the last confirmed positive test result. That could slow the city's effort to clear local homeless encampments since they will not be able to offer people beds at the shelter.

Throughout most of the pandemic, the shelter had been operating fewer beds to allow for social distancing. But over the past few months, Catholic Charities has slowly ramped up to full capacity as vaccines became more available and the nonprofit relocated people from a separate, emergency shelter at the Sandman Hotel, which closed last month.

The 153 people currently staying at the shelter account for about 70% of total bed space.

When accepting new residents, Catholic Charities does a symptom screening but doesn't not test require a negative COVID-19 test, Holmes said. And it doesn't turn people away if they aren't vaccinated.

To ensure residents' safety, the nonprofit has continued to follow federal health guidance for homeless shelters, including weekly testing, regular cleaning and making sure everyone wears a mask, regardless of vaccination status.

Additionally, new arrivals to Sam Jones who have not been vaccinated are offered inoculation shots, contributing to the 85% vaccination rate at the shelter.

While that effort was ultimately not successful in preventing the delta variant from making its way into the shelter, Holmes said it likely limited the outbreak.

"I would have to imagine without those vaccinations, the numbers could have been a lot worse," she said.

You can reach Staff Writer Ethan Varian at ethan.varian@pressdemocrat.com or 707-521-5412. On Twitter @ethanvarian.

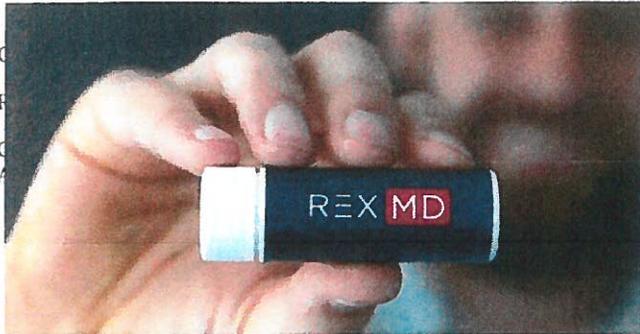
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Exhibit E



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California braces for another heat wave as climate change and drought take their toll



David Knowles • Senior Editor

Tue, July 6, 2021, 1:39 PM

The National Weather Service issued an excessive heat warning Tuesday for much of California that will last from Wednesday through next Monday, the third

US Capitol Police to add offices in California, Florida for congressional protection

USA TODAY



Mail



Jing Jing, a student from China, poses in front of a temperature gauge at Death Valley National Park in California on June 29. (Steve Marcus/Reuters)

Temperatures are forecast to reach 116 degrees in the valleys of San Diego over the weekend, and even higher in desert portions of the state. In the Central Valley, where much of the nation's food is grown, temperatures are forecast to reach 111 degrees on Sunday, and Yosemite National Park could see temperatures of over 108 degrees for several days in a row, the National Weather Service warned.

NWS Hanford @NWSHanford



Dangerous heat is expected in Yosemite National Park Friday, July 9th through Monday, July 12th. Maximum temperatures will likely be 108 degrees or higher in Yosemite Valley each afternoon Friday, July 9th through Monday, July 12th. Don't underestimate this heat! #CAwx

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extreme or exceptional drought, according to the U.S. Drought Monitor, and higher temperatures bring an elevated risk of wildfires. After a [heat dome](#) covered much of the Pacific Northwest and British Columbia last week, two wildfires erupted in Northern California. Water levels at reservoirs and lakes in the state continue to drop, and the snowpack has all but vanished.

"The drought is leading to extremely low soil moisture, which is making it easier for these high pressure systems to generate extreme heat waves because more of the sun's energy is going into heating the atmosphere rather than evaporating nonexistent water in the soil," Daniel Swain, a climate scientist at UCLA, [told NPR](#), adding, "That's sort of the vicious cycle of drought and extreme heat in a warming climate."

Late June's record-breaking heat dome was the second to affect California that month. The first, which came a week earlier, saw temperatures reach 123 degrees in Palm Springs, a record 109 in Sacramento and 118 in the town of Thermal.

Daniel Swain 
@Weather_West



Model ensembles are not suggesting that upcoming heatwave centered on CA will be as extreme as recent event in PacNW/B.C. But that's perhaps an unrealistically high bar, as this recent event was one of the most extremely anomalous heat events on Earth in recent history. [#CAwx](#)

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8:46 AM · Jul 6, 2021



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Due to climate change, the frequency of record-breaking hot temperatures continues to outpace record-breaking low temperatures by a wide and growing margin because average surface temperatures have risen by more than 1.1 degrees Celsius since the dawn of the industrial age. The impact of that shift is being felt in weather events such as this summer's unprecedented heat waves, the exceptional drought across much of the American West and the record-setting early arrival of named tropical storms, like [Tropical Storm Elsa](#), in the Atlantic.



Last week, after the heat dome in the Pacific Northwest and British Columbia, hundreds of people died from heat-related illnesses. With temperatures poised to remain in triple digits for several days in a row, the National Weather Service is warning of potential health risks and recommending that citizens stay indoors during the heat wave.

NWS Los Angeles 
@NWSLosAngeles



Warming trend throughout this week, with very hot conditions Thursday through Sunday. This heat has the potential to cause significant risk to sensitive populations. Stay hydrated, limit time outdoors during the heat of the day. [#SoCal](#) [#LAheat](#) [#CAwx](#)



Mail

1:00 PM · Jul 5, 2021



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For many migrant farmworkers, remaining indoors isn't an option. While temperatures in the Central Valley can regularly approach 100 degrees in the summer months, adding another 10 to 15 degrees can prove hazardous.

United Farm Workers 
@UFWupdates



Heat wave or not, Samuel, Mario and Juan were hard at work last week in 105° weather making sure Americans got their watermelon on July 4. They ask the Senate not to forget their efforts and to support [#FarmWorkerLegalization](#). [#WeAreHome](#) [#WeFeedYou](#)

10:30 AM · Jul 6, 2021



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degree heat.

"I'd never experienced anything like that. My head hurt and I was gasping," Luz Cruz, 18, told the [Washington Post](#).

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- 1 -

8 Attorneys for Plaintiffs

UNITED STATES COURT

NORTHERN DISTRICT OF CALIFORNIA

9 MARIN COUNTY CHAPTER OF THE
10 CALIFORNIA HOMELESS UNION on
11 behalf of itself and those it represents; JASON
12 SARRIS; LEA DEANGELO; ZACH
13 BOULWARE; CARRIE HEALON; LISA
14 NICOLE JOHNSON; DONALD HOBBS;
15 DEBORAH ANN MIRAMONTES,
16 CHARLES TALBOT, BETHANY ALLEN,
17 MICHELANGELO MONTEZ, KALANI
18 WELCH, and other similarly situated
19 homeless persons including current residents
20 of "Camp Compassion" homeless
21 encampment,

Case No.:

**DECLARATION OF LEA DEANGELO IN
SUPPORT OF PLAINTIFFS'
COMPLAINT FOR INJUNCTIVE
RELIEF PURSUANT TO 42 U.S.C. § 1983**

22 vs.

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

Defendants

DECLARATION OF LEA DEANGELO

I, Lea Deangelo, swear and affirm as follows:

1. I am a 61-year-old transgender woman and resident of Camp Compassion located at Lee Gerner Park in Novato and have been at the park on and off for the past 5 or 6 years.

- 1 2. Before coming to Camp Compassion, I had a stay at the New Beginning Shelter but had
2 to leave because of a bed bug infestation that the shelter operator did not take care of.
3 My friend and fellow Camp Compassion resident Charles Talbot also had to leave the
4 New Beginning Shelter June 19th 2021 covered in bed bug bites.
- 5 3. After leaving New Beginnings I lived in my car. When my car broke down, the Novato
6 Response Team (Officer Bates, Officer Wax, and Officer Mueller of the Novato Police
7 Department) seized the car I was living in. They told me my choice was either to go to a
8 shelter in San Francisco or have my car impounded. All I needed was a new battery –
9 but they took my car and I never got it back. I have been living at Camp Compassion for
10 the last few months because of that.
- 11 4. Because of my gender, I have been discriminated against and on the streets been
12 threatened and attacked. I rely on my friends, especially men at Camp Compassion to
13 protect me from violence on the street. If I am forced to leave Camp Compassion, I will
14 face the same dangers on the streets of Novato.
- 15 5. I also suffer from Traumatic Stress Disorder which is already greatly aggravated by the
16 City of Novato attempt to destroy my community. According to a policy brief by the
17 *National Alliance to End Homelessness*, 26% of people with my gender identity will be a
18 victim of violence while living outside in any given year. The police are coming through
19 and intimidating us at the camp on a daily basis. They say there are offering shelter, but
20 there isn't anything available in Novato.

21
22
23
24 I declare under penalty of perjury that the foregoing is true and correct to the best of my
25 knowledge, except as to matters stated on information and belief, and as to those matters, I believe
26 them to be true.

27 Executed at Novato, California.
28 July 9, 2021

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/s/Lea Deangelo

Anthony D. Prince (SBN # 202892)
General Counsel, California Homeless Union/Statewide Organizing Council
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E-mail: princelawoffices@yahoo.com

Attorneys for Plaintiffs

UNITED STATES COURT

NORTHERN DISTRICT OF CALIFORNIA

MARIN COUNTY CHAPTER OF THE
CALIFORNIA HOMELESS UNION on
behalf of itself and those it represents; JASON
SARRIS; LEA DEANGELO; ZACH
BOULWARE; CARRIE HEALON; LISA
NICOLE JOHNSON; DONALD HOBBS;
DEBORAH ANN MIRAMONTES;
CHARLES TALBOT, BETHANY ALLEN,
MICHELANGELO MONTEZ; KALANI
WELSCH, and other similarly situated
homeless persons including current residents
of "Camp Compassion" homeless
encampment,

Case No.:

**DECLARATION OF ZACH BULWARE
IN SUPPORT OF PLAINTIFFS'
COMPLAINT FOR INJUNCTIVE
RELIEF PURSUANT TO 42 U.S.C. § 1983**

vs.

CITY OF NOVATO; CITY MANAGER
ADAM MCGILL; MAYOR PAT EKLUND;
MAYOR PRO TEM ERIC LUCAN; CHIEF
OF POLICE MATHEW MCCAFFREY;
PUBLIC WORKS DIRECTOR CHRIS
BLUNK, ET AL.

Defendants

DECLARATION OF ZACH BULWARE

I, Zach Bulware, swear and affirm as follows:

1. I, Zach Boulware, am 42 years old and a resident of Camp Compassion. I am a caregiver for my girlfriend, Carrie Healon, for her acute osteoarthritis and bone

1 spurs. I am very active in the camp. I work the booth every Tuesday at the
2 farmers market where I sell my paintings.

3 2. I am trying to get onto a housing list, but all of the housing requires that Carrie
4 and I be married first to qualify together. Currenty I am working with
5 Community Action Marin to get my state identification card and paperwork in
6 order so we can can get legally married. I do not have a phone, and the way I
7 keep in touch with my fiancée is by staying at the camp where the outreach
8 workers can come and meet me.

9
10 3. Though I am a caregiver for my fiancée, I too suffer from chronic illnesses. My
11 entire life I have suffered juvenile rheumatoid arthritis, which causes me a lot of
12 pain and seriously impedes my mobility. On top of that, I suffer from a pinched
13 median nerve that was the result of workplace injury I got working on vineyard
14 five years ago.

15
16 4. The camp helps with my anxiety because I don't have to worry about the police
17 rousting me in the middle of the night. I am worried that I will be pushed into the
18 woods where I could be bitten by ticks, which happened while living in a tent out
19 in the high grasses outside of town where I was hidden. We will have to hide
20 deep in the woods, because there is no way we can manage our medical
21 conditions, break camp every day, and conduct the activities of daily living. I am
22 working actively to get housing.

23
24 5. If I am forced to leave Camp Compassion, I will be unable to keep my
25 possessions because I will have to keep moving and walking the streets if the
26 City enforces the daytime camping ban. My feet are now seriously infected and
27 walking is extremely painful. (Attached hereto as Exhibit A are true and correct
28 copies of photographs of my infected feet.)

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6. Even if I camp during the night, my medical condition will make it very difficult to physically break camp and then reassemble my camp every day.

7. I create and sell art which I can safely store and access here in the camp. This is how I make a living. If Camp Compassion is taken down, I will lose my art and my materials to create more art and that is my livelihood. Without the income from my livelihood, I will be unable to obtain the few necessities I can afford now and it will be very hard for me to continue to be a caregiver for my fiancée.

I swear under penalty of perjury under the laws of the United States that the foregoing is a true and correct statement based on personal knowledge.

Dated: July 9, 2021

Executed at Novato, California

/s/Zach Bulware

Exhibit A

Zach Boulware Additional Declaration

From: Robbie .Powelson (robbiewelson@gmail.com)

To: princelawoffices@yahoo.com; spacin101@gmail.com

Date: Monday, July 5, 2021, 11:30 AM PDT



1 Anthony D. Prince (SBN # 202892)
2 General Counsel, California Homeless Union/Statewide Organizing Council
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8 Attorneys for Plaintiffs

UNITED STATES COURT

NORTHERN DISTRICT OF CALIFORNIA

9 MARIN COUNTY CHAPTER OF THE
10 CALIFORNIA HOMELESS UNION on
11 behalf of itself and those it represents; JASON
12 SARRIS; LEA DEANGELO; ZACH
13 BOULWARE; CARRIE HEALON; LISA
14 NICOLE JOHNSON; DONALD HOBBS;
15 DEBORAH ANN MIRAMONTES,
16 CHARLES TALBOT, BETHANY ALLEN,
17 MICHELANGELO MONTEZ, KALANI
18 WELSCH, and other similarly situated
19 homeless persons including current residents
20 of "Camp Compassion" homeless
21 encampment,

Case No.:

**DECLARATION OF CARRIE HEALON
IN SUPPORT OF PLAINTIFFS'
COMPLAINT FOR INJUNCTIVE
RELIEF PURSUANT TO 42 U.S.C. § 1983**

22 vs.

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

Defendants

DECLARATION OF CARRIE HEALON

I, Carrie Healon, hereby swear and declare as follows:

1. I, Carrie Healon, 42, am a native of Novato and a currently homeless resident of Camp Compassion. I live with my significant other and caregiver Zach Boulware. I help clean up around camp. I sell paintings that I create at the Novato Farmers market every Tuesday.

Declaration of Carrie Healon

- 1 2. I have a disability in the form of bone spurs on the top of my feet that are symptomatic of
2 osteoarthritis, which is causing the cartilage between my bones deteriorate of over time. If I
3 am forced to leave Camp Compassion and have to walk everywhere during the day, I will
4 irreparably damage my feet as the result of that disability.
- 5 3. I also suffer from an overactive thyroid which makes it very difficult for my body to
6 regulate temperature. For this reason, I a prone to fainting and heat stress. Here at Camp
7 Compassion we have shade and community members bring food, water and other
8 necessities. If I have to leave the camp and be on the streets all day and prevented from
9 setting up a tent, I will suffer from the summer heat and I will also be separated from the
10 necessities –food and water—which we now get in this centralized location. I is likely that I
11 will become further disabled or worse.
- 12 4. I have attempted to call shelters in Novato and other locations in Marin County—the shelter
13 operators tell me that either they have no room or they are closed.
- 14 5. If I camp overnight and have to break camp at 7:00 am and then set up my tent, etc. at 9:00
15 pm it will also cause great pain and additional damage to the bones and joints in my feet.
- 16 6. Here in Camp Compassion, I rely on my caregiver and my campmates for safety. I grew up
17 in Novato but now there are young men who harass and stalk the homeless. This has
18 happened to me. There are around 30 people here and they offer protection.
19
20
21

22 Under penalty of perjury under the laws of the United States and the State of California, I swear
23 that the foregoing is true and correct based on personal knowledge.
24

25 Dated: July 11, 2021

26 Executed in Novato, CA
27

28 /s/ Carrie Healon

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6 Attorneys for Plaintiffs

7 **UNITED STATES COURT**

8 **NORTHERN DISTRICT OF CALIFORNIA**

9 MARIN COUNTY CHAPTER OF THE)
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11 behalf of itself and those it represents; JASON)
12 SARRIS; LEA DEANGELO; ZACH)
13 BOULWARE; CARRIE HEALON; LISA)
14 NICOLE JOHNSON; DONALD HOBBS;)
15 DEBORAH ANN MIROMONTES, LISA)
16 JOHNSON, CHARLES TALBOT,)
17 BETHANY ALLEN, MICHELANGELO)
18 MONTEZ, DEBORAH ANN)
19 MIRAMONTES, KALANI WELSCH, and)
20 other similarly situated homeless persons)
21 including current residents of "Camp)
22 Compassion" homeless encampment,)

Case No.:

**DECLARATION OF CHARLES TALBOT
IN SUPPORT OF PLAINTIFFS'
COMPLAINT FOR INJUNCTIVE
RELIEF PURSUANT TO 42 U.S.C. § 1983**

17 vs.

18 CITY OF NOVATO; CITY MANAGER)
19 ADAM MCGILL; MAYOR PAT EKLUND;)
20 MAYOR PRO TEM ERIC LUCAN; CHIEF)
21 OF POLICE MATHEW MCCAFFREY;)
22 PUBLIC WORKS DIRECTOR CHRIS)
23 BLUNK, ET AL.)

22 Defendants

23 **DECLARATION OF CHARLES TALBOT**

24 I, Charles Talbot, hereby swear and affirm that the following is a true and correct statement:

25 1. I am a 73-year-old resident of Camp Compassion located at Lee Gerner Park.

26 I am a combat veteran of the Vietnam war where I served on the frontlines. I am also a
27 father.
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Declaration of Charles Talbot

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2. I have lived at the Camp for a long time. I make sure things stay safe, and I especially look over the women to make sure no one attacks or molests them. I stay active and spend a lot of time cleaning the camp, and don't let my arthritis or age wear me down.

3. On June 19, 2021, I left the New Beginnings Center, a local homeless shelter, because I was being bit by bed bugs. No one informed me when I entered the shelter that they have had an infestation for a good long while. The bites were so bad, I had to leave. Attached hereto as Exhibit A is a true and correct copy of a photograph showing the effect of these bedbug bites.

4. After leaving the New Beginnings Center, I returned to Camp Compassion where I am now living in a tent. If I am forced to leave, my arthritis will prevent me from carrying my possessions around with me on the streets. Also, if they do open a shelter—and there are none open and offering beds right now, I am still worried that it would be infested with bedbugs.

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.

Dated: July 9, 2021
Executed at Novato, California.

/s/ Charles Talbot

1 Anthony D. Prince (SBN # 202892)
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6 Attorneys for Plaintiffs

7 UNITED STATES COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9 MARIN COUNTY CHAPTER OF THE)
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14 NICOLE JOHNSON; DONALD HOBBS;)
15 DEBORAH ANN MIRAMONTES, LISA)
16 JOHNSON, CHARLES TALBOT,)
17 BETHANY ALLEN, MICHELANGELO)
18 MONTEZ, KALANI WELCH, and other)
19 similarly situated homeless persons including)
20 current residents of "Camp Compassion")
21 homeless encampment,)

Case No.:
[Proposed] Order

17 vs.

18 CITY OF NOVATO; CITY MANAGER)
19 ADAM MCGILL; MAYOR PAT EKLUND;)
20 MAYOR PRO TEM ERIC LUCAN; CHIEF)
21 OF POLICE MATHEW MCCAFFREY;)
22 PUBLIC WORKS DIRECTOR CHRIS)
23 BLUNK, ET AL.)

22 Defendants

24 **GOOD CAUSE APPEARING** from the papers submitted by Plaintiffs' Marin County
25 Homeless Union and the Declarations submitted in support thereof the Court **GRANTS** Plaintiffs'
26 *Ex Parte* Application for Injunctive Relief as follows:
27
28

- 1
- 2 (a) Defendants are immediately restrained and enjoined from enforcing Novato
- 3 Municipal Code Sections 7-11, 7-12, 14-20.5, 14-20.7 until further order of this
- 4 Court.
- 5 (b) Defendants are immediately restrained and enjoined from closing Camp Compassion
- 6 at Lee Gerner Park or otherwise removing those encamped therein.
- 7 (c) Defendants are restrained and enjoined from and subjecting unhoused people to
- 8 Novato Municipal Code Sections 7-11, 14-20.5, 14-20.7 and any other portion of the
- 9 Novato Municipal Code which is intended to or will have the effect of removing
- 10 persons from Camp Compassion unless and until each person/family so removed is
- 11 actually provided - in real-time - with safe, appropriate indoor individual housing,
- 12 consistent with CDC guidance and Ninth Circuit's decision in *Martin v. Boise*;
- 13 (d) Defendants shall strictly observe COVID-19, heat-related and other federal CDC,
- 14 California Department of Health and Marin County Public Health guidance and
- 15 orders regarding homeless encampments and unsheltered persons in the City of
- 16 Novato.
- 17 (e) A hearing on this matter shall be set for _____, 2021.
- 18 (f) The Court shall retain jurisdiction in this matter.
- 19
- 20
- 21

22 **IT IS SO ORDERED.**

23

24 Dated: _____

25 Hon. _____
26 Judge of the District Court for the Northern District of

27

28

United States Court for the Northern District of California

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the above-entitled action.

On July 14, 2021, I caused the within PLAINTIFFS' EX PARTE APPLICATION FOR INJUNCTIVE RELIEF to be served via electronic transmission and in-person to:

Jeffrey A. Walter, Esq.
Office of the City Attorney
Novato City Hall
5 Rowland Way
Novato, CA 94945
Email: jwalter@chwlaw.us

Jeffrey A. Walter, Esq.
Colantuono Highsmith Whatley, PC
60 Napa St. Ste. F,
Sonoma, CA 5476

Email: jwalter@chwlaw.us

I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

Executed on July 14, 2021 at
Berkeley, CA

Anthony D. Prince