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8 Attorneys for Defendants

City of Novato, City Manager Adam

9 McGill, Mayor Pat Eklund, Mayor Pro

Tem Eric Lucan, Chief of Police Mathew

10 McCaffrey, Public Works Director Chris

Blunk

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

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,

Defendants.

CASE NO.: 21-CV-5401-YGR

Assigned to the Hon. Yvonne Gonzalez
Rogers

**DECLARATION OF JEFFREY
WALTER IN SUPPORT OF CITY OF
NOVATO'S MOTION TO MODIFY
TEMPORARY RESTRAINING
ORDER UNDER FRCP 65(B)(4)**

Hearing Date: July 26, 2021
Time: 1:30 p.m.
Ctrm: 1

Colantuono, Highsmith & Whatley, PC
670 W. NAPA STREET, SUITE F
SONOMA, CA 95476

DECLARATION OF JEFFREY WALTER

I, JEFFREY WALTER, declare as follows:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am a Shareholder of the law firm of Colantuono, Highsmith & Whatley, PC, attorneys of record for City of Novato. I am the City Attorney for the City of Novato, a position I have held since 1993. I have personal knowledge of the matters set forth herein and if called upon as a witness, I could competently testify thereto.

2. On July 14, 2021, at 5:09 p.m. I was electronically served with several declarations in support of an Amended Ex Parte Application and Complaint for Injunctive Relief and Declaratory Judgment in the instant case bearing the letterhead of Anthony Prince, counsel for Plaintiffs. The electronic service message was missing documents, so I called Mr. Prince to request copies of the omitted documents. During that phone call, Mr. Prince did not inform me that he intended to seek a temporary restraining order on July 15, 2021, the following day. He later emailed me the Amended Ex Parte Application and Complaint for Injunctive Relief and Declaratory Judgment he had purportedly filed with the court, but, again, his email to me to which he attached the Complaint did not include any indication that he was intending to apply for a temporary restraining order the following day.

3. In the afternoon of July 15, 2021, Mr. Prince called me to inquire whether the Amended Ex Parte Application and Complaint for Injunctive Relief and Declaratory Judgment and supporting declarations somebody had dropped off at the first floor of the administration building of the City Hall in Novato, California, would be accepted as personal service of those papers by the City. I told him that his papers had not been served on the City Clerk as they needed to be, but I would consult with the City Clerk to determine whether the City would deem such service adequate service under the law. During that phone call, too, Mr. Prince failed to inform me that

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SONOMA, CA 95476

1 he intended to seek a temporary restraining order that day.

2 4. On July 15, 2021, at around 5:00 p.m. I left my office to attend an
3 evening engagement I had arranged several months prior. I did not access my law
4 firm email address until the following morning on July 16, 2021, at which time I
5 accessed my law firm email address and learned for the first time that the Court had
6 issued its temporary restraining order (“TRO”) the night before.

7 5. In the Court’s TRO it is stated that Plaintiffs’ proof of service indicates
8 that on July 14, 2021, City Manager, Adam McGill, Mayor Pat Eklund, Mayor Pro
9 Tempore, Eric Lucan, Chief of Police Matthew McCaffery, Public Works Director
10 Chris Blunk and I were electronically and personally served. Neither I nor any of
11 these individuals were personally served with the Complaint and other papers filed in
12 this case and only City Manager Adam McGill and I were served electronically.
13 Indeed, Public Works Director Chris Blunk was not even in the State on July 14,
14 2021, for he was, has been, and is still vacationing in South Carolina with his family.

15 6. I have not been provided any evidence that a bond has been posted by
16 Plaintiffs which is required under FRCP section 65(c) prior to the issuance of any
17 TRO.

18 7. The TRO restrains the City from “closing Camp Compassion at Lee
19 Gerner Park or otherwise removing those encamped therein.” The City has entered
20 into an agreement with Homeward Bound of Marin to offer 15 individuals immediate
21 placement into Homeward Bound’s New Beginnings Center. Out of an excess of
22 caution, because the language in the TRO broadly forbids “removing” persons from
23 the park, the City is currently refraining from offering placement at Homeward
24 Bound’s New Beginnings Center to any person currently camping in Lee Gerner Park
25 to avoid violating the TRO.

26 8. On July 16, 2021, I received a letter from Mr. Prince regarding a press
27 release issued by the City of Novato in response to the TRO. In that letter, Mr. Prince
28 states “[t]he TRO does not restrain the city from otherwise offering or an unhoused

1 person from accepting any form of assistance, including appropriate relocation to
2 alternative appropriate housing.” A true and correct copy of the July 16, 2021 letter is
3 attached hereto as Exhibit 8.
4

5 I declare under penalty of perjury under the laws of the State of California that
6 the foregoing is true and correct.
7

8 Executed on July 22, 2021, at Sonoma, California.
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12 _____
13 JEFFREY WALTER
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EXHIBIT 8

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 16, 2021

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

670 W. Napa Street, Suite F
Sonoma, CA 95476

Via Regular and Electronic Mail

**Re: City's Press Release re Issuance of the Temporary Restraining Order in
*Marin County Local of the California Homeless Union, et al v. City of Novato, et al.***

Dear City Attorney Walter:

Today I became aware of a press release issued by the City of Novato and still posted on the City's official website, which contains demonstrably false and misleading statements regarding the Temporary Restraining Order issued yesterday in this case. Attached hereto is a true and correct copy of the press release in question. The headline of the press release alone is a falsehood, proclaiming as it does, "Federal Temporary Restraining Order Delays Immediate Housing and Support Services to Novato's Unhoused."

As is clear from the plain language of the TRO and as you admitted in our telephone conversation of this afternoon, there is nothing in the TRO that prevents the city from providing housing per the agreement with Homeward Bound of Marin to *any* unhoused person in the City of Novato either camped within Camp Compassion or to any member of Novato's homeless population, the vast majority of whom do not reside in Lee Gerner Park. A true and correct copy of the Order Granting Application for Temporary Restraining Order is also attached hereto.

Furthermore, any claim by the City that the TRO ties the City's hands by enjoining "removal" of plaintiffs from Lee Gerner Park disregards that the term "removal" cannot be reasonably interpreted to mean anything in this case except *forced* removal by way of the challenged ordinances. The TRO does not restrain the city from otherwise offering or an unhoused person from accepting any form of assistance, including appropriate relocation to alternative appropriate housing.

To claim that but-for the TRO, the City of Novato “was prepared to deliver much needed services” suggests that the TRO affirmatively prevents the city from providing such assistance. We challenge you to identify with particularity that portion of the Order that imposes such a restraint.

In short, today’s press release appears to be a politically motivated attempt by your client to falsely blame the Court for the city’s own decision to withhold the very limited assistance that is now available to the homeless. To cynically use Judge Yvonne Gonzalez Rogers’s ruling to suggest that the city and Novato-based nonprofit Homeward Bound cannot go forward with their agreement is an unfortunate deception. The city’s public website should not be a soapbox for the Defendants in this case.

In any case, we insist that the City immediately remove the post at issue and refrain from any further attempts at partisan and misleading statements regarding this matter. To the extent that Defendant City of Novato continues to do so, we will hold it fully responsible for any adverse consequences arising therefrom.

Very Truly Yours,



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

Attachments

Cc: Media

News

Federal Temporary Restraining Order Delays Immediate Housing and Support Services to Novato's Unhoused

Post Date: 07/16/2021 11:02 AM

Subsequent to the City's news release on July 15, 2021 announcing Council action taken on July 13, 2021 to enter into an agreement with Novato-based nonprofit Homeward Bound of Marin for immediate housing and support services for Novato's homeless, a federal lawsuit was filed against the City by the California Homeless Union and several occupants of the encampment at Lee Gerner Park. The lawsuit seeks to prohibit enforcement of new City ordinances 1669 and 1670. Though the City was prepared to enforce these ordinances and simultaneously deliver much needed services, this lawsuit and the temporary restraining order will delay those actions until the Court fully considers this matter. The City is studying the legal filing and intends to respond in support of the ordinances and the immediate housing plan approved Tuesday night.

Utilizing one-time federal American Rescue Plan stimulus monies, these new comprehensive support services would provide housing, food, case management, medical coordination, job placement and training, and support toward permanent supportive housing referrals for up to 15 homeless individuals in Novato, with priority given to those currently residing at Lee Gerner Park and other city encampments.

"The city is disappointed to learn that some occupants of Lee Gerner Park have taken this step that will delay the very services they demand - immediate and safe housing - that would have included substantial support services," said City Manager Adam McGill. "The City went to great lengths to develop a thoughtful plan for this issue that would have met the concerns expressed by the occupants of Lee Gerner Park, considered COVID precautions, and complied with federal law, all of which would have been a win-win for the homeless and the restoration of Lee Gerner Park. We are confident the City will prevail and ultimately be able to help those that truly need and desire these vital services."

Additional information on homeless outreach in Novato, assistance for those currently experiencing homelessness and a listing of community partners and resources is available at [novato.org/homelessness](https://www.novato.org/homelessness).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**MARIN COUNTY LOCAL OF THE
CALIFORNIA HOMELESS UNION, ET AL.**

Plaintiffs,

v.

CITY OF NOVATO, ET AL.,

Defendants.

Case No. 21-cv-5401-YGR

**ORDER GRANTING APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

Plaintiffs Marin County Local of the California Homeless Union, Jason Sarris, Carrie Healon, Zach Boulware, Lea Deangelo, Donald Hobbs, Lisa Johnson, Bethany Allen, (“Plaintiffs”) have filed their Amended *Ex Parte* Application and Complaint for Injunctive Relief And A Declaratory Judgment, and supporting documents. (Dkt. Nos. 1, 3.)

The proof of service attached to Docket No. 1-1 indicates that counsel Jeffrey A. Walter, for defendants City Of Novato; City Manager, Adam McGill; Mayor Pat Eklund; Mayor Pro Tem Eric Lucan; Chief of Police Mathew McCaffrey; and Public Works Director Chris Blunk (“Defendants”), was served by electronic transmission and personal service on July 14, 2021. No response has been filed by Defendants as of the time of this Order.

Having reviewed the application for Temporary Restraining Order and Preliminary Injunction, the Memorandum of Points and Authorities, the Declarations of Jason Sarris, Carrie Healon, Zach Boulware, Lea Deangelo, Donald Hobbs, Lisa Johnson, Bethany Allen, Flojaune Cofer, PhD, MPH, and counsel Anthony D. Prince, and the amended complaint filed herein, and good cause appearing, the Court **GRANTS** the application and **ORDERS** as follows:

ORDER TO SHOW CAUSE

TO DEFENDANTS CITY OF NOVATO; ADAM MCGILL; PAT EKLUND; ERIC LUCAN; MATHEW MCCAFFREY; AND CHRIS BLUNK:

YOU AND EACH OF YOU ARE ORDERED TO SHOW CAUSE why a preliminary injunction should not be entered against you to restrain and enjoin you and your agents, assigns and/or transferees, from:

United States District Court
Northern District of California

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1 (a) enforcing Novato Municipal Code Sections 7-11, 7-12, 14-20.5, 14-20.7 until further
2 order of this Court; and

3 (b) closing Camp Compassion at Lee Gerner Park or otherwise removing those encamped
4 therein.

5 **TEMPORARY RESTRAINING ORDER**

6 Pending hearing on the Order to Show Cause, Defendants and their agents, assigns and/
7 or transferees, are immediately restrained and enjoined from:

8 (a) enforcing Novato Municipal Code Sections 7-11, 7-12, 14-20.5, 14-20.7 until further
9 order of this Court; and

10 (b) closing Camp Compassion at Lee Gerner Park or otherwise removing those
11 encamped therein.

12 **IT IS FURTHER ORDERED THAT,**

13 1. Plaintiffs shall serve this Temporary Restraining Order and Order to Show Cause on
14 Defendants no later than **5:00 p.m. on July 16, 2021**, by personal service. Proof of such service
15 and signed copies of all declarations in support of the preliminary injunctions shall be filed no
16 later than **9:00 a.m. on Monday, July 19, 2021**.

17 2. Any opposition to the Order to Show Cause shall be filed no later than **Tuesday, July**
18 **20, 2021**.

19 3. Any written reply shall be filed no later than **Friday, July 23, 2021 at 12:00 noon**.

20 4. Hearing on the Order to Show Cause for Preliminary Injunction shall be held on **at 1:30**
21 **p.m. on Wednesday July 28, 2021** via the Zoom videoconference platform.

22 The Court will entertain a modified schedule for briefing and hearing, and extension of the
23 temporary restraining order, if presented by stipulation of the parties.

24 **IT IS SO ORDERED.**

25 Dated: July 15, 2021

26 
27 **YVONNE GONZALEZ ROGERS**
28 **UNITED STATES DISTRICT COURT JUDGE**

United States District Court
Northern District of California

CERTIFICATE OF SERVICE

Marin County Homeless Union v. City of Novato, et al.
United States District Court, Northern District
Case No. 4:21-cv-05401-YGR

I, McCall L. Williams, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 East Colorado Boulevard, Suite 850, Pasadena, California 91101. My email address is: MWilliams@chwlaw.us. On July 23, 2021, I served the document(s) described as **DECLARATION OF JEFFREY WALTER IN SUPPORT OF CITY OF NOVATO’S MOTION TO MODIFY TEMPORARY RESTRAINING ORDER UNDER FRCP 65(B)(4)** on the interested parties in this action as follows:

BY ELECTRONIC TRANSMISSION: I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Northern District by using the CM/ECF system on July 23, 2021. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the USDC, Northern District CM/ECF system.

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

Executed on July 23, 2021, at Pasadena, California.

/s/McCall Williams
McCall L. Williams

Colantuono, Highsmith & Whatley, PC
790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101

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