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City of Novato, City Manager Adam

8 McGill, Mayor Pat Eklund, Mayor Pro

Tem Eric Lucan, Chief of Police Mathew

9 McCaffrey, Public Works Director Chris

Blunk

10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA**

12 MARIN COUNTY HOMELESS
13 UNION, a local affiliate of the
14 CALIFORNIA HOMELESSNESS
15 UNION, on behalf of itself and those it
16 represents; CAMP COMPASSION, a
17 Homeless Union-affiliated encampment
18 in Lee Gerner Park; Individual Plaintiffs
19 JASON SARRIS; LEA DEANGELO;
20 ZACH BOULWARE; CARRIE
21 HEALON, LISA NICOLE JOHNSON;
22 DONALD HOBBS; DEBORAH ANN
23 MIROMONTES; LISA JOHNSON;
24 CHARLES TALBOT; BETHANY
25 ALLEN; MICHELANGELO MONTEZ;
26 DEBORAH ANN MIRAMONTES;
27 KALANI WELSCH, and other similarly
28 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.: 4:21-cv-05401-YGR

[Assigned to the Hon. Yvonne Gonzalez
Rogers]

**DECLARATION OF PEACE OFFICER
ALEJANDRO MULLER IN SUPPORT
OF DEFENDANT'S OPPOSITION TO
THE ORDER TO SHOW CAUSE
REGARDING PRELIMINARY
INJUNCTION**

Hearing Date: August 9, 2021
Time: 12:00 p.m.
Ctrm: 1

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SCN/CMA CA 05474

DECLARATION OF ALEJANDRO MULLER

I, ALEJANDRO MULLER, declare as follows:

1. I am a peace officer in the City of Novato Police Department. Unless otherwise stated, I have personal knowledge of the matters set forth herein and if called upon as a witness, I could competently testify thereto.

2. I make this declaration in support of Defendants' opposition to the order to show cause regarding the preliminary injunction.

The Novato Response Team

3. I have been assigned to the Novato Response Team ("NRT") since July of 2020.

4. When I joined the NRT, Officer Wax and Sergeant Bates were already established members of NRT. From July 2020 through July 2021, the NRT has consisted of Officer Wax, Sergeant Bates, and myself.

5. As part of the NRT, Officer Wax, Sergeant Bates, and I are the "Homeless Liaisons" for NPD. As Homeless Liaisons, we connect with unhoused individuals across the City of Novato to facilitate them with the opportunity of assistance and services. We also work in partnership with many different organizations, social workers, behavioral health specialists, recovery coaches, and outreach workers to provide services to unhoused individuals in the City of Novato. Some of the resources we coordinate to provide include resources for food, income, employment, mental health treatment, substance abuse treatment, and housing. In addition, the NRT is often assigned to address "quality of life" issues for the residents of Novato, including but not limited to crime prevention, homelessness, and education.

6. Since starting my assignment with the NRT, I have spent approximately 20% of my regular work week (a) communicating with Social Services and community partners in order to learn about homelessness, (b) facilitating the provision of resources to unhoused subjects who are welcoming of services, and (c) coordinating and advocating for services for those who are suffering from

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1 homelessness. I spend approximately 60% of my work week conducting outreach with
2 the unhoused community in the City of Novato.

3 7. Most of the community complaints relating to homelessness stem from
4 Lee Gerner Park, so I spend approximately 70% of my dedicated outreach time at the
5 Park. As a result of the large amount of time required by the encampment at Lee
6 Gerner Park, I am often forced to disregard other NRT duties such as crime
7 prevention.

8 8. Due to the substantial amount of time I have spent at Lee Gerner Park, I
9 have become familiar with almost every unhoused individual that has camped at the
10 Park, as well as persons who associate with the unhoused campers of the Lee Gerner
11 Park encampment.

12 **Officer Muller’s Training**

13 9. In September of 2019, I attended a POST-certified Basic Crisis
14 Negotiations course. This course consisted of approximately 40 hours of training on
15 how to respond to emergencies involving hostage situations, barricaded individuals,
16 suicidal persons, and other situations involving the need to establish person-to-person
17 communication. I have conducted and assisted with numerous negotiations in the
18 field, while on duty.

19 10. In July of 2020, I attended a POST-certified De-escalation and Tactical
20 Communication (ICAT) course. This approximately 16-hour training consisted of
21 instruction in communication, defensive tactics, and de-escalation tools to use when
22 encountering various individuals and situations.

23 11. In May of 2021, I attended a POST-certified training program for
24 Practical De-Escalation and Tactical Conduct. This training consisted of
25 approximately 16 hours wherein participants learned how to create conditions for
26 successful de-escalation.

27 12. In March of 2021, I was selected to become one of the Novato Police
28 Department’s De-Escalation and Tactical Communication (ICAT) instructors.

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1 13. I have attended multiple webinars and training sessions addressing
2 homelessness.

3 **Background of the Lee Gerner Park Encampment**

4 14. When I joined NRT July of 2020, I became aware that the unhoused
5 subjects living in the Lee Gerner Park encampment and its adjacent area were
6 collaborating with the NRT to develop housing plans. These plans included referring
7 unhoused subjects to inpatient rehabilitation programs, reconnecting with families, or
8 electing to vacate the park voluntarily.

9 15. In July of 2020, an arborist conducted an evaluation of the land near the
10 creek and determined that human presence was deteriorating the land. As a result of
11 that evaluation, a habitat restoration project ensued. The project included the
12 installation of a split rail fencing protecting the land adjacent to the creek.

13 16. In August of 2020, several unhoused subjects began to occupy Lee
14 Gerner Park again. These unhoused subjects later began calling this encampment
15 "Camp Compassion."

16 17. Since August of 2020, I have observed the population of Lee Gerner
17 Park fluctuate on a weekly basis. Around September of 2020, NRT Officers began
18 keeping a count of the observed number of occupants and tents at Lee Gerner Park.
19 The lowest recorded number of unhoused individuals at the encampment was 14
20 persons in October of 2020. The highest number of unhoused campers recorded at the
21 encampment was approximately 30 persons in early 2021. As of July 22, 2021, the
22 encampment has approximately 20 unhoused campers.

23 18. Since I began with the NRT, I have recorded approximately 70 different
24 unhoused subjects who have either temporarily stayed at or are still camping at the
25 encampment. These 70 unhoused subjects consist of unhoused subjects currently
26 camping at Lee Gerner Park, unhoused subjects who left and never returned, and
27 unhoused subjects who continuously leave and return to the camp.
28

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1 19. In addition to the unhoused subjects who camp at the Lee Gerner Park
2 encampment, the park is often visited by known associates of the unhoused campers.
3 In the thick of the COVID-19 pandemic, I would go to the park and witness
4 approximately four to eight persons, who were not staying at the camp, spending time
5 with the unhoused campers. These visits sometimes resulted in large social
6 gatherings—upwards of twenty people—at Lee Gerner Park. These groups would
7 usually congregate around a large tree at the center of the Park. The subjects who
8 visited the encampment subjects would usually not wear facial coverings.

9 20. The encampment has a common gathering area that is located
10 approximately 30 feet from the park’s centralized bridge. This gathering area has
11 several chairs, a non-City barbeque, and plastic tarps hanging from a large tree. The
12 tarps are made of plastic, and the non-City barbeque is usually kept underneath the
13 tarp. The placement of the barbeque concerned me, and I have asked the unhoused
14 campers to move the barbeque several times in the past so that it is not directly
15 underneath the plastic tarp.

16 21. Over the past couple of months, a group of unhoused subjects from
17 Sausalito, California have taken up several spots to the rear of Star Restaurant, which
18 is located at 1700 Novato Blvd.

19 22. I have witnessed unhoused subjects who reside in one tent and keep
20 their personal belongings in another tent. One of the unhoused campers from Sausalito
21 set up a large sleeping tent and a “living room” style tent directly next to the sleeping
22 tent. The camper connected an extension cord from a nearby power source into the
23 tent.

24 23. Often, residents of the encampment share tents that have been left
25 behind by other unhoused campers who left the park. There is no tent clean up and no
26 sanitized process of passing over property in between the old camper leaving and new
27 campers taking over the tent. Plaintiff and unhoused camper Jason Sarris has referred
28 to these tents as “communal property.” New residents utilize the same bedding as the

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1 previous occupant and often sleep in the same debris that the previous occupant left
2 behind. I have offered NRT's assistance in cleaning old tents multiple times, but these
3 offers are often rejected due to the influence of other unhoused individuals.

4
5 **Outreach Efforts by Officer Muller**

6 24. As part of the NRT, I engage in outreach efforts and provide assistance
7 to the unhoused campers at the Lee Gerner Park encampment. One example of such
8 outreach with an unhoused camper from the Lee Gerner Park encampment is Plaintiff
9 Donald "Bud" Hobbs. NRT referred Plaintiff Hobbs to the Kerner shelter multiple
10 times. Plaintiff Hobbs was accepted into the shelter on two occasions, but he elected
11 not to show up for intake or voluntarily left the shelter. During my conversations with
12 Plaintiff Hobbs, I learned that he suffered from alcoholism. In June of 2021, NRT was
13 able to facilitate Plaintiff Hobbs' intake to an inpatient treatment facility. Plaintiff
14 Hobbs has not been seen at the Lee Gerner Park encampment since he entered the
15 treatment facility.

16 25. NRT rarely issues citations for minor violations of the laws. I have
17 fielded dozens of complaints from Novato residents regarding the ongoing blatant
18 disregard of the law at the encampment. These complaints have ranged from minor
19 criminal activity (such as drinking alcoholic beverages in public, defecating in public,
20 having open containers of alcohol in public, utilizing a non-City barbeque, littering,
21 etc.) to felonious criminal activity (including sales of narcotics and assaults).

22 26. There have been several subjects who have temporarily resided or
23 currently reside at the Lee Gerner Park encampment who suffer from apparent mental
24 health illnesses. My approach when I encounter the unhoused population is, and has
25 always been, one that is guided by empathy and reasonableness. I am fully aware that
26 every individual is different and therefore each unhoused subject requires a tailored
27 approach in hopes of assisting them out of homelessness. I utilize legal discretion as a
28 strategy to build rapport with unhoused subjects.

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1 27. On any normal day at the Lee Gerner Park encampment, I observe
2 several blatant infractions of the law, including but not limited to unhoused subjects
3 cooking on a non-City barbeque, unhoused subjects with open containers of alcohol,
4 unhoused subjects smoking cannabis in public, and dogs off leash that belong to
5 unhoused campers.

6 28. I have witnessed dozens, if not hundreds, of Municipal Code violations
7 and infractions while conducting outreach at the encampment. When I observe a
8 violation, I attempt to obtain voluntary compliance from the unhoused subject so the
9 code violation could be remedied. In my experience, citing unhoused individuals for
10 minor infractions severely inhibits the opportunity for rapport building and often
11 slows progress in getting the unhoused subject out of homelessness. My goal while
12 conducting outreach is not to arrest unhoused subjects, but rather partner with the
13 unhoused member to achieve a long-term solution.

14 29. Other unhoused campers have hindered the NRT's outreach efforts. It is
15 my opinion, that when an unhoused individual genuinely wants to accept help,
16 collaborates with NRT's and its partnering agencies efforts in finding long-term
17 solutions to their problems, more often than not, a path towards a solution can be
18 achieved.

19 **Unhoused Campers' Refusal of Outreach Assistance**

20 30. The greatest difficulty that I have experienced in dealing with the
21 unhoused population at the Lee Gerner Park encampment has been coordinating
22 services for those who are unwilling to cooperate with the NRT and Marin County
23 Health and Human Services.

24 31. In January of 2021, the Kerner Shelter opened and offered beds to the
25 unhoused. For the first few months, NRT was successful at coordinating entries from
26 the Park encampment into Kerner Shelter. However, we found that those referrals
27 would often either voluntarily leave Kerner Shelter, or they would be kicked out of the
28 Shelter for behavioral concerns.

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1 32. I have brought up different solutions, including relocation with family
2 members, inpatient treatment facilities for those who needed it, or job programs.
3 These are methods that have proven successful in the past with unhoused subjects
4 residing outside of Lee Gerner Park. More often than not, members of Camp
5 Compassion have refused the NRT’s outreach efforts and offers of assistance.

6 **Specific Examples of Unhoused Campers Who Refuse Outreach**

7 33. Unhoused camper and Plaintiff Leah DeAngelo:

8 a. I first spoke with Plaintiff DeAngelo when she was living out of
9 her vehicle in the area of 7456 Redwood Blvd. Plaintiff DeAngelo had a dog
10 with her named Geronomo. The dog was over 100 pounds and she told me she
11 could not control him.

12 b. NRT connected Plaintiff DeAngelo with the SPAHR center, a non-
13 profit community agency dedicated to serving the lesbian, gay, bisexual, and
14 transgender community in Marin County. After she spoke with a representative
15 of the SPAHR center, she told me she would no longer engage with the center
16 as she did not feel congregate living was a good solution for her.

17 c. NRT fielded several complaints regarding Plaintiff DeAngelo’s
18 behavior while she was staying in the 7456 Redwood Blvd. area. The
19 complaints involved her temperament and her aggressive dog.

20 d. During our engagement with Plaintiff DeAngelo while she was
21 living from her car, she told me her vehicle was not properly functioning, as it
22 needed a new battery. She requested assistance to obtain resources to fix her
23 vehicle. The vehicle at the time was a Toyota Prius, and she told me the repairs
24 would cost her several thousand dollars that she could not afford.

25 e. While Leah DeAngelo was residing out of her vehicle, she told me
26 she was afraid to reside at Lee Gerner Park because she felt harassed by
27 members of the camp. While I was present, I witnessed Plaintiff DeAngelo tell
28

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1 Officer Wax that she was the victim of a sexual assault while at Lee Gerner
2 Park. This incident was documented by Officer Wax under NP20-2866.

3 f. Plaintiff DeAngelo moved to the Lee Gerner Park encampment
4 after she told us her vehicle was towed by the SPAHR center at her request to
5 an unknown location.

6 g. Since she moved to the Park encampment, several outreach
7 community partners have attempted to engage with her to no avail. She has
8 been offered resources by the Downtown Streets Team, the NRT, PIVOT, and
9 the CARE team. From speaking with the respective outreach personnel,
10 Plaintiff DeAngelo refuses to engage with outreach personnel to end her
11 chronic homelessness.

12 h. Plaintiff DeAngelo was reported as an unwanted subject at the
13 Novato Library adjacent to Lee Gerner Park. Staff from the library had asked
14 Plaintiff DeAngelo to put on a face covering. After she refused, Plaintiff
15 DeAngelo was asked to leave the property. She refused to vacate Library
16 grounds. During that encounter, I spoke with Plaintiff DeAngelo and she told
17 me she did not want to wear a face covering because she did not believe the
18 Coronavirus was real. Although probable cause existed at that time to arrest
19 Plaintiff DeAngelo for trespassing, I was able to gain voluntary compliance and
20 she left the area.

21 i. During my interactions with Plaintiff DeAngelo, she has told me
22 that because she does not believe COVID-19 is real, she will not adhere to
23 COVID-19 protocols. As recent as early July of 2021, I spoke with her
24 regarding an opportunity for her to enter the New Beginnings program, but she
25 responded by telling me that if she had to get COVID-19 tested, she would not
26 go.

27 j. Plaintiff DeAngelo continues to refuse any opportunities offered to
28 her by the NRT or partnering agencies.

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34. Unhoused campers and Plaintiffs Zachary Boulware and Carrie Healon:
- a. Plaintiffs Healon and Boulware are involved in a romantic relationship and share a tent at the Lee Gerner Park encampment.
 - b. I have offered both Plaintiff Healon and Plaintiff Boulware the opportunity for an intake at Kerner Shelter, but they have both refused. Plaintiff Boulware told me that he refused because he suffers from anxiety and cannot reside in a congregate living situation. Plaintiff Healon told me that she will not accept shelter unless Plaintiff Boulware goes with her.
 - c. During my interactions with Plaintiffs Boulware and Healon, I observed that they collect large amounts of debris around and inside of their encampment. A list of items of items I have observed outside of their tent include the following: broken couches, soiled mattresses with mold, lawn chairs, large amounts of Styrofoam, spoiled milk cartons, other spoiled foods, soiled clothing, and large amounts of broken soiled cardboard boxes. The NRT has offered and provided them with multiple means to clean up the debris in their camp, however they refused any assistance.
 - d. At one point in early 2021, the interior of Plaintiffs Boulware and Healon’s tent was filled with debris to the point that debris was overflowing outside of the tent. Their living conditions grew so uninhabitable that they asked for a new tent from NRT. When I went to assist with the clean-up, I noticed mold inside of their old tent, which had spread to their bedding and the cardboard boxes underneath their bedding. I also noticed a large amount of spoiled food, spoiled milk, and rat droppings. The conditions of the old tent were such that Plaintiffs Boulware and Healon elected to throw away all of their personal belongings inside of the old tent.
 - e. Plaintiffs Boulware and Healon were provided with a new tent. After several weeks, I noticed that their encampment began to overflow with debris again. I have given them several warnings to clean up their encampment

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1 and offered NRT’s assistance, but they continue to refuse help with cleaning up
2 the debris they leave.

3 f. Plaintiff Boulware has told me that the debris around his tent is
4 trash and admitted that the trash in and around his encampment has caused an
5 adverse medical reaction.

6 g. On June 17, 2021, I encountered Plaintiff Boulware, whom I heard
7 almost screaming in pain. He told me that he believed he had a skin infection. I
8 summoned medical personnel to the scene, but Plaintiff Boulware refused to be
9 transported to a nearby hospital for treatment.

10 h. During my time with NRT, I cannot recall a single time when I
11 have observed either Plaintiffs Boulware or Healon wearing a facial covering. I
12 have witnessed the both of them walking throughout the greater downtown area
13 of Novato. Plaintiff Healon has also told me that Plaintiff Boulware often sleeps
14 at a friend’s house near Lee Gerner Park.

Lax Covid-19 Prevention Behaviors at the Encampment

15
16 35. The unhoused individuals at Lee Gerner Park have reported the main
17 reason they choose to camp at Lee Gerner Park was the CDC’s restrictive guidelines
18 of sheltering in place in relation to homeless encampments. From my experience in
19 dealing with the unhoused population at Lee Gerner Park, the campers were, and
20 continue to be, reckless and inconsistent in following COVID-19 protections.

21 36. As previously mentioned, even when Marin County had its most
22 restrictive guidelines regarding COVID-19, rarely did I see anybody at Lee Gerner
23 Park wearing a facial covering or practicing social distancing. Members of the camp
24 and visitors to the camp would not wear face coverings, contrary to CDC guidance.

25 37. As discussed above, the population of unhoused at Lee Gerner
26 fluctuated on a weekly, if not daily, basis. New members would take over a tent that
27 was previously occupied by another individual. Once I observed three different
28 individuals occupy the same tent within a 6-day period.

1 38. I have observed footage of unhoused camper and Plaintiff Jason Sarris
2 and unhoused camper Robert Powelson traveling throughout Marin County, including
3 Sausalito and San Rafael, to attend protests during the shelter in place order.

4 39. In December of 2020, Plaintiff Sarris and Robert Powelson occupied the
5 Bachelor Officers Quarters (“BOQ”) in the Hamilton area of Novato. The BOQ is
6 approximately 5 miles away from Lee Gerner Park. While Plaintiff Sarris and
7 Powelson were staying at the BOQ, Plaintiff Sarris maintained his encampment at Lee
8 Gerner Park.

9 40. In addition to having large social gatherings at Lee Gerner Park,
10 Plaintiff Jason Sarris and Robert Powelson would also recruit subjects from Marin
11 County to join them at the BOQ, in reckless defiance of the shelter-in-place order.

12
13 I declare under penalty of perjury under the laws of the State of California that
14 the foregoing is true and correct.

15
16 Executed on July 26, 2021, at Novato, California.

17
18 
19 _____
ALEJANDRO MULLER

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CERTIFICATE OF SERVICE

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

I, McCall L. Williams, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 East Colorado Boulevard, Suite 850, Pasadena, California 91101. My email address is: MWilliams@chwlaw.us. On July 27, 2021, I served the document(s) described as **DECLARATION OF PEACE OFFICER ALEJANDRO MULLER IN SUPPORT OF DEFENDANT’S OPPOSITION TO THE ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION** on the interested parties in this action as follows:

BY ELECTRONIC TRANSMISSION: I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Northern District by using the CM/ECF system on July 27, 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 27, 2021, at Pasadena, California.

/s/McCall Williams
McCall L. Williams

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