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**SUPERIOR COURT OF STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

<p>Ramona Mayon,</p> <p>Plaintiff,</p> <p>v.</p> <p>City and County of San Francisco,</p> <p>Defendant</p>	<p>Case No. CGC-20-588010</p> <p>RESPONSE TO CITY'S OPPOSITION</p> <p>Date: Dec 2, 2020 Time: 1.30 pm Dept: 302 Filed: Nov. 25, 2020</p>
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I.

NOTICE (plus an official head count of the encampment)

The reason for the “sweep” to have happened is stated clearly on page 9, line 16-17:

The encampment was creating sanitation and public safety issues.

If I may please direct the Court’s attention to the footnote on page 12 of the City’s Opposition. That’s all the importance the City gives to the will of the voter enacting this law.

In fact, City personnel did provide advance notice to the residents (Kositsky para. 5), although Petitioner complains that it was not the written notice required by S.F. Police Code 169 (also known as Proposition Q). But while Proposition Q created a new, non-criminal prohibition against camping on City sidewalks that the City may enforce by providing the required notice, it had no effect on other legal basis for enforcement action such as public nuisance laws (e.g. Cal Penal Code 372; SF Health Code 581, 596) or laws against obstruction of sidewalks (e.g. Cal Penal Code 647c; SF Police Code 22-24). The City is not required to comply with the notice provisions of Proposition Q when enforcing laws other than Proposition Q and the encampment resolution at issue here was not an enforcement action under Proposition Q (Kositsky para 8.).

Thinking we are about to see the official reason for this resolution (a.k.a “sweep”), we go immediately to the Declaration of Jeff Kositsky, the Manager of San Francisco Healthy Streets Operation Center (HSOC), paragraph eight:

The encampment resolution was not an enforcement action under San Francisco Police Code 169.

He fails to say, anywhere else in his declaration, what the reason it needed resolving in the first place, that allowed it such a loophole.

City provides a variety of services to homeless encampments during the pandemic, although services vary depending on the size and accessibility of the encampment. Services include distribution of masks, gloves, hand sanitizer, trash bags, food and potable water and in many

1 locations, the City has placed portable toilets, handwashing stations, and “pit stop” trailers
2 with showers ... in many encampments ... sanitation issues ... drug dealing ... criminal
3 activity ... after months of effort, most encampments have been resolved through offers of
4 shelter, with over a thousand people moved into alternative shelter sites. HSOC offers
5 everyone at an encampment access to some form of safe alternative shelter.

6
7 Now, this is the *most interesting* bit here, because Mr. Kositsky is flat out telling this Court that
8 his opinion (in direct contradiction to the CDC’s advice) is what is happening throughout San
9 Francisco and the attitude wrapped up in the arrogance of these words does indeed warrant the
10 granting of a TRO:

11 In my experience, if people in encampments were permitted to remain where there are,
12 public health and public safety issues associated with the encampment would persist.
13 Currently to the best of my knowledge there are fewer than five encampments of ten or more
14 tents remaining in the City. All of them have reasonable access to portable toilets, hand
15 washing stations, potable water and regular trash pick up. ... no large encampment
16 resolutions currently scheduled. ...

17 Notice is touched upon:

18 Based on reports ... prior to the encampment resolution at issue in this case, two different
19 teams of City workers visited the encampment. On Nov 16, a DPH team assessed people
20 for COVID and other health issues, and on Nov 17 members of the Housing Outreach Team
21 informed the residents, including the Petitioner, that the City would be offering shelter
22 alternatives on Nov 18. ... on the day of the encampment resolution there were 15 people
23 and ten tents. City workers offered every resident an alternative shelter site in either a Safe
24 Sleeping Village or in a congregate shelter, along with transportation to the shelter site.
25 There were 8 vehicles, all but one of them which remained at the conclusion of the
26 encampment resolution. MTA found no vehicles out of compliance and did not direct
27 anyone to move any vehicle.

28 Please note that the man in charge of the sanitation supplies says the encampment was big
enough to get a w.c. etc. Instead, the encampment has a “resolution”. Tidy.

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II.

BATHROOM TEN-MINUTE WALK AWAY (SOMETIMES)

At no time has anyone ever told the residents they were supposed to be using that beach-use “pit stop”. Telling 15 to 25 people (when you add the tent folk with the RV folk) there is a bathroom ten-minutes away, which I might add arrives anywhere from 8 am to 11 am and then is removed for the night is just insulting. Blaming them (and clearing the encampment because of) pooping in the bushes when the one required (by CDC and it’s own guidance papers) to provide the toilet doesn’t, is the very definition of cruel and unusual punishment.

III.

WHAT WAS THE SHELTER BEING OFFERED NOV. 18, 2020

Of the City’s Exhibits that we would like to draw the Court’s attention to, page 54 of the Declaration of Mr. Goldman’s. The exhibit is the Public Health Order No. C19-07o. The section we would like the Court to consider is (f) LIMITATIONS ON GATHERINGS THAT INVOLVE MIXING OF DIFFERENT HOUSEHOLDS TO REDUCE VIRUS TRANSMISSION RISK:

Gatherings of individuals from different households pose a significant risk of virus transmission to the community. The greater number of people from different households in a gathering, the greater the risk of the spread of COVID-19. All public and private gatherings of any number of people occurring outside a single household is prohibited.

If one were to take that at face value, that would actually mean, quite literally, every congregant shelter needs to be closed immediately. And why won’t it be? Because the life of an impoverished, elderly, disabled unhoused human being like the plaintiff’s is worthless. The only way I could get the videos I recorded (with permission thus admissible) in front of the Court (due to COVID-19 restrictions) was to upload them to a one-page website (along with the 90 colour photos taken Nov 18, 2020) and transcribe them. I submit the actual dialogue here, and refer to the video’s physical location being at www.supportsurvival.home.blog There are six videos with approximately 8 minutes of video. These two videos’ dialogue relates to where and what kind of

1 shelter the City is offering, which they are only doing because it's required by the *Boise* ruling,
2 otherwise it's cruel and unusual punishment. Well, it's *criminal* per the City's own public health
3 ruling to have large gatherings of people from different households. The first article that came up
4 about it, published on April 2, 2020, states 400 homeless. Other articles drop that figure, but the
5 LEGAL point is, that's a lot of different households gathering in one spot and then going out in the
6 **not** sheltering-in-place environment of the day-to-day life of 400 or so homeless people and their
7 pets...remembering there have been reports that COVID-19 spreads among animals, too ... so my
8 chances of contracting COVID-19 at the convention center just went from 400 new daily chances
9 to 800, when one factors the animals allowed into the Moscone Center, as clearly stated on the
10 video by the man in charge SFFD paramedic Mike Mason. The first video he is speaking to one of
11 the other plaintiffs, Mitzi Fata.

12 **Video #5 from Nov. 18, 2020**

13 SFFD: We'll be offering shelter ---

14 Mitzi: Okay. Your shelter is what?

15 SFFD: Well. We're gonna have different congregant shelters in the City.

16 Me: NO. That isn't sufficient.

17 SFFD: City is offering shelter shortly after the morning meeting so I'll know.

18 **Video #6 from Nov 18. 2020**

19 Me: So I'm on the HOT team list. They put me down on the list. You know, as in part of the
20 system. So what's being given to me?

21 Park Ranger lady: (mumbles) You gotta go today.

22 Me: Right. Okay. I've already moved four days ago. I knew this was coming when they said it, so
23 I moved already.

24 SFFD: Okay. So I have the Moscone Center.

25 Me: What's that? I mean. I know what it is but what's in it for homeless?

26 SFFD: I'm going to give you the whole spiel. Large convention center. City's turned it into a
27 shelter. Plenty of space. Plenty of air in there. Ummm. Large congregant shelter. It's got ---

28 Me: How many people are in there?

1 SFFD: I don't know it all, not enough to offer any details, I can't get into (it) off the top of my head
2 I don't know.

3 Me: Like is more than a hundred?

4 SFFD: Off the top of my head. Just give me your birthdate and I'll have a transport van here shortly
5 and I'll get you transported there. Sound good?

6 Me: So more wait, I want to hear more about it though, how much of my stuff can I bring?

7 SFFD: So, uh uh uh, shelter allows you to take two bags, a carry-on, a bicycle, a pet, if you have
8 one. Sound okay to you?

9 Me: So it's a shelter in a congregant shelter in the middle of a pandemic. But no thank you.

10 From the California State Constitution Article 1, Section 1:

11 All people are by nature free and independent and have inalienable rights. Among those are
12 enjoying and defending life and liberty, acquiring, possessing, and protecting property, and
13 pursuing and obtaining safety, happiness and privacy.

14 Pursuing and obtaining safety in a deepening pandemic is protected by these words enshrined in the
15 State's Constitution. There's authority to counter the federalism the City is concerned with.

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18 IV.

19 **JURISDICTION TO CONTROL HEALTH OBJECTIVES DURING A PANDEMIC**

20
21 Plaintiff is a ghostwriter by trade, or was before an illness in 2013. In the sense that a
22 ghostwriter is always interested in the voices that are behind a document or a manuscript, so she
23 approached the *Hastings Law School* stipulation with interest. First and foremost, though, it would
24 seem the defendant is trying to gaslight us into thinking a federal anything would supercede the
25 little bitty police ordinance 169 and its annoying notice requirement, however, we would remind
26 everyone that states' rights trump federal every time.
27
28

**CITY SHOWS BY ITS OWN EXHIBIT WHY IT
MUST HAVE UNCHECKED ABILITY TO CLEAR THE SIDEWALKS**

In reading the *Hastings Law School* stipulation, again, as a ghostwriter not a lawyer, isn't this something similar to a straw purchaser of a legal gun for someone who can't buy one himself. By that plaintiff means, there was a problem with *massive* untenable sidewalk obstruction by an *overwhelming* amount of destitute human beings trying to live on America's most costly piece of real estate. So the City Attorney gets "sued" by the very entity that trained most of its staff. City would be HAPPY to enforce a stipulation it was able to reach about removing the homeless. It's what the City wants to do and now it is being "forced" to comply. That's just bizarre.

Pg 179 of the Declaration by Jeremy Goldman, which is from the June 30, 2020 Hastings Law School stipulation itself:

- The City is hopeful that most people offered an alternative location will be willing to accept it, but if necessary to comply with this stipulated injunction, the City will employ enforcement measures for those who do not accept an offer of shelter or safe sleeping sites to prevent re-encampment.

- The City agrees that it shall cause 70% of the number of tents as counted on June 5, 2020 to be removed along with other encamping materials and related personal property, and their occupants relocated to a hotel room, safe sleeping site, off-street sites, or other placement by July 20, 2020. The City will take action to prevent re-encampment. After July 20, 2020 the City will make all reasonable efforts to achieve the shared goal of permanently reducing the number of tents, along with all other encamping materials and personal property, to zero.

- All parties shall respect the legal rights of the unhoused of the Tenderloin in all manners including in relation to relocating and removing the unhoused, the tents, the other encamping materials and personal property.

- The parties agree that if either party believes that the other party to be in breach of the stipulated injunction, the parties will meet and confer within one business day of a dispute being raised.

1 *Ho Ah Kow v. Nunan* (D. Cal 1879) 12 Fed Case 252 [5 Sawy. 552] “In our country, hostile and
2 discriminatory legislation by the state against persons of any class, sect, creed, and nation, in
3 whatever form it may be expressed is forbidden by the 14th amendment.”
4

5 *Kincaid v. City of Fresno* 244 F.R.D. 597 (E.D. Cal 2007) “The practice of announce, strike, seize,
6 and destroy [the property of the homeless] immediately is against the law” and “violates the
7 constitutional right to be free from unreasonable search and seizure.”
8

9 *Buchanan v. Warley* 245 U.S. 60, 245 U.S. 73 (1917) “It cannot be doubted that among the civil
10 rights intended to be protected from discriminatory state actions by the 14th amendment are the
11 rights to acquire, enjoy, own, and dispose of property. Equality in the enjoyment of property rights
12 was regarded by the framers of that amendment as the essential precondition to the realization of the
13 other basic civil rights and liberties which the amendment was intended to guarantee.”

14 *Ackerman v. Port of Seattle* 55 Wn 2d 400, 409, 348 P.2d 664 (1960) (quoting from *Spann v. City*
15 *of Dallas* III Tex. 350, 355, 235 S.W. 513 19 A.L.R. 1387 (1921)) “Property in a thing consists not
16 merely in its ownership and possession, but in the unrestricted right of use, enjoyment, and
17 disposal. Anything which destroys any of the elements if property, to that extent, destroys the
18 property itself. The substantial value of property lies in its use. If the right of use be denied, the
19 value of the property is annihilated and ownership reduced to a barren right.”

20 *Lawrence v. Texas* 539 U.S. 558 (2003) the Constitution protected “people from unwarranted
21 government intrusion into a dwelling or other private places.”

22 *California v. Carney* 471 U.S. 386 (1985) states “a motorhome has most of the privacy
23 characteristics of a house.”
24

25 *United States v. Sandoval* 200 F.3d 659, 660-61 9th Cir. (2000) “Thus we think it much more
26 likely that society would recognize an expectation of privacy for the [tent] camper on public land
27 than for the squatter in a private residence.”
28

1 *Boyd v United States* 116 U.S. 616, 630 (1886) “...all invasions on the part of the government, and
2 its employees, of sanctity of a man’s home and the privacies of life.”
3

4 *Obergefell v. Hodges* 570 U.S. ____ (2015) “The Constitution promises liberty to all within its
5 reach, a liberty that includes certain specific rights to allow a person, within a lawful realm, to
6 define and express their identity. ... In addition, these liberties extend to certain personal choices,
7 central to individual dignity and autonomy, including intimate choices that define personal identity
8 and beliefs.”

9 The residents of this encampment, and others scattered across the city, have only plastic or metal
10 to call home. What is being discussed here? Toilets with toilet paper. Potable water. Wipes.
11 Hand sanitizers. Masks. Showers. Regular garbage collection. Mostly, we must be able to sleep
12 and shelter-in-place undisturbed. What luxuries those seem from our vantage point. Under any
13 other circumstances, no one would have a “right” to any of that. But the pandemic changed things.
14 It put the mandate on the government to protect the health of ALL the community. Government
15 can no longer wash its hands of the responsibility of what it does because *everything* is different
16 now. It HAS to be different or a lot of us could seriously die. What happened on Nov 18, 2020
17 was not the responsible way to act, by its own printed-out guidance (based on CDC
18 recommendations). It should not be allowed to be repeated while the public health order to
19 shelter-in-place is in effect. Once COVID-19 has been defeated, then the City can go back to its
20 whack-a-mole homelessness policy.
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22 Respectfully,
23 Ramona Mayon
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PROOF OF SERVICE

I, Merlin Mayon, am above the age of 18 and I am not a party to this action. I hereby certify that on this 2nd day of Dec, I served the foregoing *Request for Temporary Restraining Order* by causing it to be mailed to:

City Attorney's Office
1 Dr Carlton B Goodlet Plaza
San Francisco, California 94102

/s/ Merlin Mayon

Dated 12/02/20