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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

MARIN COUNTY HOMELESS UNION, for itself and its members **MICHAEL GUIDRY, LANI ILONHIA, DAVID TILLOTSON, SUSANA PINTARD, DEBORAH RAM, JOHN SANDFORT and All Homeless Persons** Who Have Either Been Accepted Into or Have Pending Applications for Admission to the Lee Gerner Park Temporary Encampment Program, Plaintiffs, vs. **CITY OF NOVATO, AMY CUNNINGHAM, PAT EKLUND, TIM O'CONNER, RACHEL FARAC, MARK MILBERG, KEVIN JACOBS, SULLINA SMITH, JESSICA DEAKYNE** all sued in their individual and official capacities, **and DOES 1-20,** Defendants.	Case No.: COMPLAINT FOR BREACH OF CONTRACT AND SPECIFIC PERFORMANCE with JURY TRIAL REQUESTED

INTRODUCTION

The City of Novato is at the precipice of evicting half a dozen a people living in the Lee Gerner Park Temporary Encampment Program ("Program") otherwise known as Camp Compassion, ("the Camp"). The Program has been operated for over two years by the City of Novato pursuant to a Settlement Agreement ("Agreement" or "Contract") that resolved a federal

lawsuit brought by Plaintiff Marin County Homeless Union ("the Union" or "MCHU") in *Marin County Homeless Union et al v. City of Novato et al* 4:21-cv-05401-YGR(RMI) **[See Exhibit A]**

On February 11, 2025 the Novato City Council is expected to pass a resolution to shut down the Lee Gerner Park Temporary Encampment Program– a program it is obligated to perform under the Settlement. The City did not provide notice that the City Council will vote on the resolution until four days ago, Friday, February 7, 2025 when it was posted on the City's official website. **[See Exhibit B]**

As is detailed in this complaint, DEFENDANTS are breaching their obligations under Settlement Term **2.3.2** and abusing their discretion in such a way to endanger the lives and safety of all current Program Participants.

PARTIES

PLAINTIFFS:

PLAINTIFF MARIN COUNTY HOMELESS UNION "Union" is an unincorporated association of unhoused, unsheltered, marginally housed, homeless and formerly homeless residents of Marin County and as such is able to sue on behalf of its members and those it represents as well as on its own behalf. The Union is a chapter of the California Homeless and includes all members of Camp Compassion, including all program participants of the Lee Gerner Park Temporary Camp Program operated by the City of Novato. **[INJURY TO UNION]**

PLAINTIFF MICHAEL GUIDRY is a non-binary program participant of the Lee Gerner Park Temporary Encampment Program who is in recovery from a major surgery that impacts his spine. He has attempted to move into shelters operated by Marin County Homeward Bound, which failed to provide him with an ADA-compliant bed. After

suffering extreme pain in a bed that was too short, he requested Homeward Bound to provide him an alternative bed, which it refused, forcing him to leave the shelter. As a resident of the Camp, he receives housing case management services through the Program.

SUSANA PINTARD is a non-binary resident of the Camp and a participant in the Program whose only means of mobility is a wheelchair who suffers from dementia and relies on the mutual aid of other campers to survive daily. They are also receiving housing case management services through the Program.

DEBORAH RAM is 71 years old and works as a caregiver, often assigned overnight shifts. She is a Camp resident and Program participant, sheltered camper, member of the Marin County Homeless Union and sheltered Camper in Lee Gerner Park Temporary Encampment Program. They are also receiving housing case management services through the Program.

JOHN SANDFORT is a Camp Resident and participant in the the Program and is a handyman and construction worker who also engages in seasonal work. They are also receiving housing case management services through the Program.

LANI ILONHIA is a sheltered camper, member of the Marin County Homeless Union and Sheltered Camper in Lee Gerner Park Temporary Encampment Program. They are also receiving housing case management services through the Program.

GINO MEYERS is a sheltered camper, member of the Marin County Homeless Union and Sheltered Camper in Lee Gerner Park Temporary Encampment Program. They are also receiving housing case management services through the Program.

DAVID TILLOTSON is a sheltered camper, member of the Marin County Homeless Union and Sheltered Camper in Lee Gerner Park Temporary Encampment Program. He is also receiving housing case management services through the Program.

Plaintiffs Are Represented by:

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Law Offices of Anthony D. Prince
2425 Prince Street, Ste. 100
Berkeley, CA 94705 Tel: 510-301-1472
princelawoffices@yahoo.com

DEFENDANTS:

DEFENDANT CITY OF NOVATO "CITY" is a municipal corporation located in Marin County with the capacity to sue and be sued.

Address: 922 Machin Avenue Novato, CA 94945.

DEFENDANT AMY CUNNINGHAM is the City Manager of the City of Novato and acts as Chief Executive Officer with authority who functions as a final policy decision maker of the City.

Address: 922 Machin Avenue Novato, CA 94945

DEFENDANT JESSICA DEAKYNE is the former Assistant City Manager of the City of Novato who was tasked with management of the Lee Gerner Temporary Encampment Program.

Address: 922 Machin Avenue Novato, CA 94945

DEFENDANT SULINA SMITH is the is the former Homeless Policy Analyst of the City of Novato who was tasked with management of the Lee Gerner Temporary Encampment Program.

DEFENDANT Rachel Farac "City Council" is a councilmember for the City of Novato

Address: 922 Machin Avenue Novato, CA 94945

DEFENDANT Kevin Jacobs "City Council" is a councilmember for the City of Novato

Address: 922 Machin Avenue Novato, CA 94945

DEFENDANT Pat Eklund "City Council" is a councilmember for the City of Novato

Address: 922 Machin Avenue Novato, CA 94945

DEFENDANT Tim O'Connor "City Council" is a councilmember for the City of Novato

Address: 922 Machin Avenue Novato, CA 94945

DEFENDANT Mark Milberg "City Council" is a councilmember for the City of Novato

Address: 922 Machin Avenue Novato, CA 94945

Defendants are represented by:

Novato City Attorney
GARY B. BELL, State Bar No. 288360
922 Machin Avenue Novato, CA 94945
gbell@chwlaw.us

JURISDICICTION AND VENUE

This Court has original jurisdiction of this claim for breach of contract and specific performance. All parties to this action live or do business in the City of Novato, and all actionS arise within the City of Novato.

STATEMENT OF FACTS

1. On October 13th, 2022, DEFENDANT CITY OF NOVATO City and MARIN COUNTY HOMELESS UNION entered into a Settlement Agreement [Exhibit A]. The Contract stipulated to the District Court retaining jurisdiction for two years to interpret and enforce the terms of the Settlement Agreement and designate Hon. Magistrate Judge Robert Illman to resolve disputes regarding same.

2. The Settlement Agreement created an official City Committee on Housing and Homelessness ("The Committee" or "H&H Committee") to advise the City Council on homeless services. **[Term 2.4 et seq, Section 3]**
3. It also created a Lee Gerner Park Temporary Encampment Program jointly administered by the City and Union **Term 2.3**
4. It also created a process at the end of Settlement term to determine 1) whether there is a need to continue operation of the Camp and 2) whether the City has or can obtain the funding required to operate the Program and the Camp. **Term 2.3.4**
5. Through the Program, unhoused people in Novato became Program participants and "Sheltered Campers" under **2.3.3(b)**. The camp was operated by the City which at all times maintained total control of the premises.
6. The CITY has managed the Camp and operated the Program through City Manager CUNNINGHAM and her two designees, JESSICA DEAKYNE and SULLINA SMITH.
7. The CITY OF NOVATO and UNION coordinated comprehensive social services at the Camp Downtown Streets Team, Marin County Continuum of Care, Homeward Bound, Community Action Marin, Saint Vincent de Paul, which provided ALL PLAINTIFFS comprehensive case management and other forms of services at the Camp.
8. Over the course of two years, the Camp became the most successful housing program in the history of Marin County with over 40 people in the camp moving on into permanent housing, through services at the Camp. The names of these people are: Cecilia Valegra, Amy Phillips, Michael Montez, Victor Garcia, Lea DeAngelo, Bud, Pete Wood, Corbin, Jason Sarris, Richard Bandel, Alan, Elsa, Zac Boulware, Carrie Healon, Angela Gonzales, Val, Chrystal Gift, Kelani Welch, Charles Talbot, Jesse Tassey, Bethany Allen,

Ruben Bautista, Bryan Duran, Anthony Mowry, Max, Succuro, Griff Squire, Michelle Robinson, Sam Pic, Lamont Elkins. Bama Giil, Patricia Parker, Tangi, Ryan Grimes, James Mcbride, John, Linda, Quintin Mansell, Jay (last name unknown) and Nate (last name unknown.)

9. Tragedy struck this successful housing program on July 30th, 2024, when an arsonist, later tried and convicted, burned down a significant portion of the encampment.[1]

10. On the day of the fire, the encampment was evacuated into a nearby motel. The camp was red tagged and fenced off, and residents moved into motel rooms.

11. During the motel stays, the CITY all but discontinued communication with the UNION. Then, beginning on or about August 20 2024, the CITY, through SULLINA SMITH, abruptly terminated the motel stays for about half of the camp without engaging with the UNION or campers in a way to find acceptable alternative shelter. The evictions were premised on vague, general allegations of not following certain motel rules. Although the Settlement Agreement by its terms required the CITY to afford Program participants the right to be represented by the UNION in any adverse action, the removals from the motel were abrupt, final, and without an opportunity for the Union to intervene as the participants were turned out to the streets.

12. SMITH, who had no training in providing housing services, then began engaging in ex-parte communications with the remaining UNION members in the Motels in an effort to displace them entirely and permanently from the Camp.

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[1] Novato woman sentenced for burning homeless camp. *Marin Independent Journal.* https://www.marinij.com/2024/11/20/novato-woman-sentenced-for-burning-homeless-camp/

13. For example, SMITH terminated GUIDRY'S motel stay, forbade him to return to the Camp and sent him to "Jonathan's Place," a mass congregant shelter. GUIDRY, who is a tall man in recovery from a spinal fusion, was given bed that was far too small for him, preventing him from fully extending his body and causing unbearable pain. The shelter would not provide an alternative bed to accommodate his disability, forcing him to leave.

14. Participant SUSANA PINTARD, also wrongfully removed from the motel and who suffers from dementia and incontinence, requires a higher standard of care that no shelter was willing to provide. She was instead temporarily installed in a medical facility and was soon back on the street after SULLINA SMITH refused to permit her to return to the Camp.

15. SMITH also demanded DEBORAH RAM and SANDFORT into shelters – knowing they are employed in work that requires overnight, was not able to satisfy any of the curfew requirements of any shelter.

16. TILLOTSON, LANI, GINO MYERS similarly could not access the shelters and were soon put out back onto the streets and had specifically come to the Temporary Camp Program as way to accommodate their Post-Traumatic Stress Disorder "PTSD" which made congregate shelters practicably inaccessible – as opposed to the greater privacy and autonomy of the Temporary Camp Program that met their needs for housing services.

17. In sum, ALL PLAINTIFFS were turned out of the motels more homeless than when they came in. They were not permitted by the CITY to go back into the camp to retrieve their survival gear because SMITH and DEAKYNE had fenced off Camp Compassion – and they had had to leave much behind because DEAKYNE and SMITH told them they could only take limited possessions to their motel rooms.

18. In September, a significant numbers of UNION members and participants of the Temporary Camp returned to Lee Gerner Park and set up camp outside of the red tagged portion of the camp. The CITY opposed, and Novato Police Officers quickly threatened them with arrest and issued two notices to vacate in short succession.

19. The Union objected the City was barred from evicting campers, or closing the camp, under Settlement **Term 2.3.2** because (1) The Union Designed and City had not undergone a review of housing and homelessness to provide it to the City Council (2) The City Council had failed to decide if there were sufficient funds and continued need for the camp.

20. The Union contacted US Judge Robert Ilman, who had retained jurisdiction to enforce the settlement agreement, and began a meet and confer process under **Term 3.1**

21. The City took the position that a Staff Report, that was unsigned by any UNION representative or the Committee on Housing and Homelessness ; and did not address whether there was continued need or sufficient funds for the Program, constituted a "Joint Finding" that satisfied **Term 2.3.2**

22. The US District Judge issued a restraining order against the City from evicting Program Participant residents who had returned to Lee Gerner Park – which included MICHAEL GUIDRY, DEBORAH RAM, SUSANA PINTARD, JOHN SANDFORT, DAVID TILLOTSON, LANI ILHONIA, and GINO MEYERS, based on a finding that Plaintiffs were likely to succeed on the merits of their motion, and that irreparable harm would result.

23. In the interim the UNION took great efforts to work with the City to accomplish **Term 2.3.2.** The President of the UNION Jason Sarris called for two special meetings of the

Housing and Homelessness Committee to create joint findings with the City. **The** City actively blocked these efforts and refused to participate in create joint findings to the City Council. DEAKYNE and SMITH blocked two separate special meetings of the Homeless Policy Steering Committee which was mandated to participate under **Term 2.3.2** by locking out Committee members from the CITY buildings and refusing to post agendas on the CITY'S website. Shortly after blocking these meetings, both SMITH and DEAKYNE resigned from their jobs.

24. After exhaustive briefing, the CITY took the position that the UNION would need to file a breach of contract claim in State Court because the US District Court's jurisdiction under **Term 3.1, 3.2** had expired.

25. The US District Judge agreed found he no longer had jurisdiction, and that Plaintiffs claims would have to be filed in State Court.

FIRST CAUSE OF ACTION – BREACH OF CONTRACT (Marin County Homeless Union v City of Novato)

26. Plaintiff reincorporates the preceding paragraphs as if fully set forth herein.

27. PLAINTIFF MARIN COUNTY HOMELESS UNION entered a contract with CITY OF NOVATO on October 13th, 2022 [See Exhibit A].

28. MARIN COUNTY HOMELESS UNION did all, or substantially all the significant things that the contract required of them, such as dismissing Marin County Homeless Union et al v. City of Novato et al 3:21-cv-05401(YGR)(RMI) with prejudice.

Settlement Term 2.3.2 states that:

"Three months before the expiration of the said two-year period, the City and the Union Designee, with the assistance of the Committee, shall

undertake a review of the state of housing and homelessness in the City of Novato and provide the City Council its findings. The City Council shall determine whether there is need and sufficient fund to continue the operation of the Temporary Camp. The continued operation of the Temporary Camp beyond the two-year period specified in this Agreement shall be at the sole discretion of the City Council."

29. On February 11th, the NOVATO CITY COUNCIL will vote to shut down the Lee Gerner Temporary Encampment Program.

30. In doing so, The CITY OF NOVATO is breaching **Settlement Term 2.3.2** because the CITY has failed to undertake a review with the UNION, with the assistance of the Homeless Policy Steering Committee, about the state of housing and homelessness in the City, so that the City Council can make a decision as to whether there is a need for the Camp to remain open.

31. The report to the City on the state of housing and homelessness was, pursuant to the Settlement Agreement, required to be prepared and filed jointly by the City's representatives, the Union and the Committee on Housing of which Jason Sarris, President of the Union, serves as Chair. At a meeting of the Committee on Housing and Homelessness, on or around September 24, 2024, the Committee voted unanimously to recommend to the City Council that the Camp remain open given 1) that the Camp had become a staging ground for successfully housing 40 previously unsheltered homeless persons and 2) the need for the Camp and the Program to continue was evidenced by the increase in the number of unsheltered persons in Novato since the Settlement Agreement was signed and 3) the City Council had already hired a contractor and allocated funds to

repair the fire-damaged encampment. However, Defendants SMITH and DEAKYNE failed to include the Committee's official recommendation in the report that was submitted to the City Council.

32. The staff report censored any deleted verbal input and did not include any findings on the need for the Program or whether there was sufficient funding for its continued operation.

33. The UNION protested the CITY'S failure to engage in making a joint finding. UNION President Jason Sarris who is also Chair of the Homeless Policy Steering Committee called two special meetings of the Housing and Homeless Committee to resolve the dispute and to create actual, joint findings to the CITY COUNCIL.

34. SMITH, DEAKYNE, and CUNNINGHAM unilaterally obstructed and canceled properly-noticed meetings of the Committee on Housing and Homelessness by refusing to post public notice of the meetings on the City website and physically locking all Committee members and the public out of City buildings, and preventing the Committee from undertaking its review to submit findings to the CITY COUNCIL.

35. Today, on February 11, 2025, The CITY COUNCIL will vote on a Resolution to close the Camp and discontinue the Program that violates **Term 2.3.2** inasmuch as neither the Staff Report, the censored report of the Housing and Homeless Committee nor the Resolution, itself, contains any information as to whether there is continued need or sufficient funds to operate the Lee Gerner Temporary Encampment Program. Moreover, the City has violated **Term 2.3.2** which requires that determination of the need for the Camp to remain and the availability of funds for its operation take take place three months "before the expiration of the said two-year period."

36. The CITY intends to close the camp before it has performed these obligations. The resulting eviction will cause catastrophic harm to ALL PLAINTIFFS who live in the Camp, and who will be forced to live on the streets and be subject to arrests and imprisonment up to six months for the act of having sleeping bags, tents, and blankets for Novato's recently passed ordinance that criminalizes being homeless [See (Ord. No. 1597, § 1, 2-24-2015; Ord. No. 1648, § 1, 1-29-2019; Ord. No. 1669, § V, 6-8-2021; Ord. No. 1720, § 1, 12-9-2024)

37. In short, the CITY will throw all PLAINTIFFS out into the street more homeless than before and terminate their main hope of getting into permanent housing – and there only safe place they can be until that housing can be procured.

SECOND CAUSE OF ACTION – WRIT OF MANDATE CAL CIV CODE § 1085 (All Plaintiffs Against All Defendants)

38. Under Cal Civ Code 1085 (a) "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person."

39. Under Cal. Civ. Proc. Code § 1085, a traditional mandate "may issue to correct the exercise of discretionary legislative power, but only if the action taken is so palpably unreasonable and arbitrary as to show an abuse of discretion as a matter of law." *Carrancho v. California Air Res. Bd.*, 111 Cal. App. 4th 1255, 1265, 4 Cal. Rptr. 3d 536, 545 (2003) (emphasis in original). In reviewing quasi-legislative decisions, the "authority

of the court is limited to determining whether the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair." *Fullerton Joint Union High Sch. Dist. v. State Bd. of Educ.*, 32 Cal. 3d 779, 786, 654 P.2d 168, 172 (1982). The Court must ensure that the agency or officer making the decision "has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." *W. States Petroleum Assn. v. Superior Court*, 9 Cal. 4th 559, 577, 888 P.2d 1268, 1277 (1995).

40. The CITY OF NOVATO and its CITY COUNCIL are specially enjoined from closing the Lee Gerner Temporary Encampment Program until they have completed the deliberative process under **Term 2.3.2**

41. The CITY COUNCIL's February 11th resolution to close the Camp does not make a specific finding, based on any evidence, that there is no longer need or sufficient funding to continue the Camp as required under **Term 2.3.2**

42. Because the CITY has failed to work with the UNION to present joint findings to the CITY COUNCIL, the CITY COUNCIL, and the CITY COUNCIL has not made specific findings based on specific evidence, it has not "adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." *W. States Petroleum Assn. v. Superior Court*, 9 Cal. 4th 559, 577, 888 P.2d 1268, 1277 (1995).

43. The CITY COUNCIL'S decision is without evidentiary support, and importantly the County of Marin, through its high-ranking officials Supervisor Eric Lucan and Director of Homeless Services Gary Naja Reise have indicated there is continued need for the

Camp and will provide funding to the City. In fact, the County and the State have provided hundreds of thousands of dollars that can be used for the Camp right now.

THIRD CAUSE OF ACTION CAL CIV CODE §1559 (All Plaintiffs Against All Defendants)

44. All Plaintiffs, besides the Marin County Homeless Union, are third party intended beneficiaries of the settlement agreement because they are "sheltered campers" under **Term 2.3.3** and have obligations and benefits under the Settlement Agreement.

45. The California Supreme Court has established a three-part test to establish whether a party can sustain a third-party action (1) whether the third party would in fact benefit from the contract. but also (2) whether a motivating purpose of the contracting parties was to provide a benefit to the third party, and (3) whether permitting a third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties. *See* Zigas v. Superior Court (1981) 120 Cal.App.3d 827 [174 Cal.Rptr. 806]. In *Zigas*. the Supreme Court held that government contracts to provide tenancy "manifests an intent to make tenants direct beneficiaries, not incidental beneficiaries."

46. MARIN COUNTY HOMELESS UNION and CITY OF NOVATO entered into an agreement that intended to benefit members of the MARIN COUNTY HOMELESS UNION who would become members of the Lee Gerner Temporary Encampment Program.

47. PLAINTIFFS MICHAEL GUIDRY, LANI ILONHIA, DAVID TILLOTSON, SUSANA PINTARD. DEBORAH RAM, JOHN SANDFORT are members of the MARIN

COUNTY HOMELESS UNION and are approved by the CITY OF NOVATO as program participants of the Lee Gerner Park Temporary Encampment Program created by the Settlement.

48. ALL PLAINTIFFS were approved by the CITY OF NOVATO as program participants of the Lee Gerner Park Temporary Encampment Program created by the Settlement Agreement and operated jointly by the CITY OF NOVATO and MARIN COUNTY HOMELESS UNION.

49. ALL PLAINTIFFS have obligations and receive benefits under the Settlement and are specifically identified in the contract to receive these benefits and obligations as "Sheltered Campers" **[Term 2.3.3.]**

50. Third Party status is consistent with the intention of the parties, because the MARIN COUNTY HOMELESS UNION maintained the action only for the benefit of its members and the CITY OF NOVATO only opened the camp to approved program participants.

51. ALL PLAINTIFFS will face catastrophic injury because they are involuntarily homeless, do not have accessible alternative shelter, and will be forced to relocate to other less safe parts of Novato. ALL PLAINTIFFS will be subject to arrest and up to 6 months imprisonment under Novato's anti-camping ordinance if they use blankets, tents, and sleeping bags elsewhere in the City.

52. As a result, ALL PLAINTIFFS will have to hide in forests, under bridges, and isolated locations far away from bathrooms and potable water, resulting in chronic dehydration and hunger.

53. ALL PLAINTIFFS will not be allowed to use sleeping bags, tents, and survival gear in other parts of the City, and will face extreme cold, rain that will result in hypothermia and cold-related injury, as well as premature death caused by cardiovascular impairment caused by persistent cold.

FOURTH CAUSE OF ACTION - NEGLIGENCE (All Plaintiffs against All Defendants)

54. Plaintiff reincorporates the preceding paragraphs as if fully set forth herein.

55. "The first element, duty, 'may be imposed by law, be assumed by the defendant, or exist by virtue of a special relationship.'" (Doe v. United States Youth Soccer Assn., Inc. (2017) 8 Cal.App.5th 1118, 1128 [214 Cal.Rptr.3d 552].)

56. A Special Relationship exists between the CITY OF NOVATO and ALL PLAINTIFFS because the CITY has been in continuous direct control of the Lee Gerner Temporary Encampment Program, providing site security, managing all aspects of the encampment, providing all forms of maintenance, providing fire extinguishers, designing and creating the encampment.

57. The CITY also coordinates comprehensive social services at the Camp Downtown Streets Team, Marin County Continuum of Care, Homeward Bound, Community Action Marin, Saint Vincent de Paul, based in Marin County, and SAFE Team which provided ALL PLAINTIFFS comprehensive case management and other forms of services.

58. The CITY OF NOVATO knows all natural PLAINTIFFS were particularly vulnerable and dependent on the CITY'S competent management of the Lee Gerner Park Temporary Encampment Program because ALL PLAINTIFFS are involuntarily homeless individuals. Some campers are especially vulnerable, for example PINTARD suffers

from dementia, GUIDRY from a spinal fusion, and they rely on the aid and support of the camp for survival.

59. In December of 2024, the CITY passed an ordinance criminalizing homelessness in the City of Novato, making it a misdemeanor for involuntarily homeless people to use blankets to sleep at night, or tents, which is punishable up to six months in prison. Ord. No. 1720, § 1, 12-9-2024

60. CITY is aware that if they close the Camp without providing alternative shelter, ALL PLAINTIFFS can be arrested and imprisoned for taking rudimentary precautions from the homeless.

61. PLAINTIFFS have a right to access potable water for drinking and human sanitation [See Water Code 106.3].

62. PLAINTIFFS currently have access to potable water at Camp Compassion, because it is directly next to the Public Library, which has bathrooms and water fountains.

63. PLAINTIFFS need bedrolls, tents, tarps, to survive unsheltered homelessness, to maintain their body temperature at night. PLAINTIFFS also need a place they can keep survival gear, important documents, water, clothes, laptops, and other things necessary for survival and getting into housing.

64. Plaintiffs such as SUSANA PINTARD, suffers from dementia and is confined to a walker for ambulation. SUSANA PINTARD relies on having her camp near the bathrooms and water fountains near the camp for survival. MICHAEL GUIDRY also is recovering from a spinal fusion and cannot go great distances for water.

65. Novato Ord. No. 1597, § 1, 2-24-2015 imposes on PLAINTIFFS up to six months in jail PLAINTIFFS from using bedrolls, tents, tarps, "or similar equipment" on public

property – which they need to survive, except through their participation in the Program.

66. On February 11th, the City Council will vote to close the Program, which will instantaneously making ALL PLAINTIFFS conduct illegal – and impose on all PLAINTIFFS to criminal liability of up to six months in jail and the seizure of their belongings.

67. ALL DEFENDANTS have a duty of care TO PLAINTIFFS not to negligently expose them to Novato Ord. No. 1597, § 1, 2-24-2015 in a way that will force them to incur significant criminal liability.

68. ALL DEFENDANTS have a duty of care not to interfere with PLAINTIFFS access to potable water for drinking and sanitation, that is uniquely available at Camp Compassion because of its proximity to the Public Library.

69. ALL DEFENDANTS will negligently breach their duty of care on February 11, 2025 by voting to shut down the encampment, which will likely result in immediate eviction and arrests of ALL PLAINTIFFS who are Program participants.

FIFTH CAUSE OF ACTION – SPECIFIC PERFORMANCE

70. Under California law "[a] claim for specific performance is an equitable one," *Nwosu v. Uba*, 122 Cal. App. 4th 1229, 1240 (2004), which may be compelled unless otherwise excluded by California statute. Cal. Civ. Code § 3384 (West 2013). "Specific performance of a contract may be decreed whenever: (1) its terms are sufficiently definite; (2) consideration is adequate; (3) there is substantial similarity of the requested performance to the contractual terms; (4) there is mutuality of remedies; and (5) plaintiff's legal remedy is inadequate." Union Oil Co. of Cal. v. Greka Energy Corp., 165

Cal. App. 4th 129, 134 (2008) (quoting Blackburn v. Charnley, 117 Cal. App. 4th 758, 766 (2004)).'

71. THE UNION gave adequate consideration THE CITY for the Settlement by dismissing their lawsuit with prejudice.

72. Settlement Terms. **2.3.0, 2.3.1, and 2.3.2** are sufficiently definite to be enforced as intended. The City must engage in the deliberative process with the Union and submit joint findings to the City as required by **2.3.2** before a final decision of the City Council for the closure or continuance of Camp Compassion.

73. After the City Council makes a decision, the City must give Plaintiffs 60 days' notice before removing Homeless Union Members from Lee Gerner Park as required by **Term 2.3.1**

74. There is mutuality of remedies because the City can use its discretion to continue or close the encampment, provided they undertake the deliberative process with Plaintiffs under **2.3.2,** and give residents 60 days' notice before the closure of the camp under **2.3.1**

75. Plaintiffs' remedies are inadequate, because failure to abide by **2.3.1** and **2.3.2** will result in Homeless Union members at Camp Compassion to be unlawfully evicted from their domiciles at Lee Gerner Park, after which Plaintiffs will be perpetually subject to criminal liability under Novato's anti-camping ordinances wherever they sleep in the City.

PRAYER FOR RELIEF

Plaintiff prays as follows.

Defendants be ordered to perform Settlement Term Nos. 2.3.0, 2.3.1, 2.3.2.

That the court issue a restraining order and preliminary injunction enjoining closure of the Lee Gerner Temporary Camp Program, and eviction of Plaintiffs from Lee Gerner Park until the City performs its obligations under the Settlement Agreement.

This court award costs of suit and attorney fees.

All other relief as the court deems necessary.

Dated: February 11, 2025

Respectfully submitted,
/s/ *Anthony D. Prince,*
Anthony D. Prince,
General Counsel, California Homeless Union/Statewide Organizing Council
Law Offices of Anthony D. Prince
Attorneys for Plaintiffs

VERIFICATION

As President of the Marin County Homeless Union, a party to this action, I, Jason Sarris, declare and affirm that the matters stated in the foregoing document are true to the best of my knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

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

Dated: February 11, 2025

Executed at Novato, CA

/s/ Jason Sarris

PROOF OF SERVICE

I am the Attorney of Record in the above-captioned case. My business address is Law Offices of Anthony D. Prince, 2425 Prince Street, Ste. 100, Berkeley, CA. On February 11,

2025, I served the foregoing document described as Complaint for Breach of Contract by placing a true copy of the Complaint in a sealed envelope with postage thereon fully pre-paid and deposited with the U.S. Postal Service at Berkeley, California on February 11, 2025 and addressed to:

Novato City Attorney
GARY B. BELL, State Bar No. 288360
922 Machin Avenue Novato, CA 94945
gbell@chwlaw.us

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

Dated: February 11, 2025

Executed at Berkeley, California /s/ Anthony D. Prince

Exhibit A

JEFFREY A. WALTER, State Bar No. 63626
JWalter@chwlaw.us
COLANTUONO, HIGHSMITH & WHATLEY, PC
670 W. Napa Street, Suite F
Sonoma, California 95476
Telephone: (707) 996-9690
Facsimile: (707) 996-9603

CARMEN A. BROCK, State Bar No. 162592
CBrock@chwlaw.us
LILIANE M. WYCKOFF, State Bar No. 293519
LWyckoff@chwlaw.us
COLANTUONO, HIGHSMITH & WHATLEY, PC
790 E. Colorado Boulevard, Suite 850
Pasadena, California 91101-2109
Telephone: (213) 542-5700
Facsimile: (213) 542-5710

Attorneys for Defendants
City of Novato, et al.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MARIN COUNTY HOMELESS UNION, a local affiliate of the CALIFORNIA HOMELESSNESS UNION, on behalf of itself and those it represents; CAMP COMPASSION, a Homeless Union-affiliated encampment in Lee Gerner Park; Individual Plaintiffs JASON SARRIS; LEA DEANGELO; ZACH BOULWARE; CARRIE HEALON, LISA NICOLE JOHNSON; DONALD HOBBS; DEBORAH ANN MIROMONTES; LISA JOHNSON; CHARLES TALBOT; BETHANY ALLEN; MICHELANGELO MONTEZ; DEBORAH ANN MIRAMONTES; 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.: 4:21-cv-05401-YGR

[Assigned to the Hon. Yvonne Gonzalez Rogers]

STIPULATION AND JOINT MOTION FOR ORDER FOR DISMISSAL WITH RETAINED JURISDICTION

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

This stipulation is entered into by and between named Plaintiffs and Defendants in the above matter (collectively referred to as the "Parties"), by and through their respective counsel, and is based on the following facts:

1. Plaintiffs filed this case on July 14, 2021. The case was initially assigned to Magistrate Judge Donna M. Ryu. Dkt. No. 4.

2. On July 15, 2021, this case was reassigned to Judge Yvonne Gonzalez Rogers for all purposes.

3. The case was thereafter referred to Magistrate Judge Robert Illman on July 27, 2021 for settlement purposes. Dkt. No. 17.

4. With the assistance of Magistrate Judge Illman, the Parties agreed to a stipulated preliminary injunction, approved by the Court and issued on October 18, 2021. Dkt. No. 54.

5. With the assistance of Magistrate Judge Illman, the Parties negotiated a Settlement Agreement that resolved the entire case. Dkt. No. 76.

6. The Settlement Agreement was fully signed and effective as of September 15, 2022.

7. As part of the Settlement Agreement, the Novato City Council adopted an amendment to Ordinance 1669. The Settlement Agreement also provided that upon the amendment's effective date, Plaintiffs were required to dismiss their complaint with prejudice. The amendment went into effect on October 13, 2022.

8. Also as part of the Settlement Agreement, the Parties agreed that Magistrate Judge Illman would retain jurisdiction to enforce the terms of the Settlement Agreement.

Therefore, the Parties stipulate as follows:

1. The Plaintiffs and Defendants, by and through their attorneys, agree to and jointly move for entry of an order dismissing this case with prejudice, pursuant to the Settlement Agreement attached to this stipulation, incorporating this stipulation and the attached Settlement Agreement into the order and retaining the Court's jurisdiction to

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790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101

enforce the terms of the stipulated Settlement Agreement. See *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

2. The Plaintiffs and Defendants have consented to Magistrate Judge Robert Illman's jurisdiction to enforce the terms of the stipulated Settlement Agreement and request the Court specially designate Magistrate Judge Illman to conduct all further proceedings in this action.

DATED: October 4, 2022

COLANTUONO, HIGHSMITH & WHATLEY, PC

JEFFREY A. WALTER
CARMEN A. BROCK
LILIANE M. WYCKOFF
Attorney for Defendants
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

DATED: October 4, 2022

LAW OFFICE OF ANTHONY D. PRINCE

ANTHONY D. PRINCE
General Counsel,
California Homeless Union
Attorney for Plaintiffs

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

enforce the terms of the stipulated Settlement Agreement. See *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

2. The Plaintiffs and Defendants have consented to Magistrate Judge Robert Illman's jurisdiction to enforce the terms of the stipulated Settlement Agreement and request the Court specially designate Magistrate Judge Illman to conduct all further proceedings in this action.

DATED: October 13, 2022

COLANTUONO, HIGHSMITH & WHATLEY, PC

/s/ Carmen A. Brock
JEFFREY A. WALTER
CARMEN A. BROCK
LILIANE M. WYCKOFF
Attorney for Defendants
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

DATED: October __, 2022

LAW OFFICE OF ANTHONY D. PRINCE

ANTHONY D. PRINCE
General Counsel,
California Homeless Union
Attorney for Plaintiffs

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

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into between Plaintiffs Marin County Homeless Union ("Union"), a local affiliate of the California Homeless Union, on behalf of itself and those it represents; Camp Compassion, a Homeless Union-affiliated encampment in Lee Gerner Park; Individual Plaintiffs Jason Sarris, Lea Deangelo, Zach Boulware, Carrie Healon, Lisa Nichole Johnson, Donald Hobbs, Deborah Ann Miromontes, Lisa Johnson, Charles Talbot, Bethany Allen, Michelangelo Montez, Deborah Ann Miramontes, and Kalani Welsch (collectively, "Plaintiffs") in the case of *Marin County Homeless Union, et. al. v. City of Novato, et. al,* United States District Court for the Northern District of California, case number 21-cv-05401-YGR (the "Lawsuit") and Defendants City of Novato, City Manager Adam McGill, Mayor Pat Eklund, Mayor Pro Tem Eric Lucan, Chief of Police Mathew McCaffey, Public Works Director Chris Blunk, and the City Council for the City (together, "City") (each a "Party," and jointly, the "Parties") who agree as follows:

1. **Recitals.**

This Agreement is made upon these essential facts:

1.1 Plaintiffs filed their Lawsuit on July 14, 2021. (Dkt. No. 1.) The Lawsuit alleges in relevant part that City Ordinances Nos. 1669 and 1670 as drafted are constitutionally overbroad and vague and whose enforcement

would result in selective enforcement against the Plaintiffs and the unhoused community in general.

1.2 On July 15, 2021, the Court issued a temporary restraining order and order to show cause for preliminary injunction. (Dkt. No. 8.)

1.3 On July 23, 2021, the City moved to modify the temporary restraining order seeking clarification and modification of certain of the order's terms. (Dkt No. 13.)

1.4 On July 27, 2021 the Court issued a written order granting in part and denying in part the City's motion to modify the temporary restraining order. (Dkt. No. 16.)

1.5 On July 27, 2021, the Court issued an order referring this case to Magistrate Judge Robert Illman for settlement purposes. (Dkt. No. 17.)

1.6 On October 18, 2021, the Court approved the Parties' Stipulation For Entry of a Preliminary Injunction ("Preliminary Injunction"). (Dkt. No. 54.)

1.7 The Preliminary Injunction provided in relevant part:

1.7.0 The City was empowered to establish a temporary camp ("Temporary Camp") within the City's Lee Gerner Park ("Park") and require all persons then camping within the Park to either (1) relocate to the Temporary Camp; (2) consider placement at the New Beginnings Shelter operated by Homeward Bound; (3) remove themselves and their property from the Park; or (4) be involuntarily removed from the Park;

1.7.1 If a campsite within the Temporary Camp was permanently vacated, the City would clear the vacant campsite within the Temporary Camp and not repopulate it;

1.7.2 All residents within the Temporary Camp had to abide by a Code of Conduct;

1.7.3 While the Temporary Camp exists, the City agreed to provide and pay for handwashing stations, portable bathrooms, weekly mobile showers, existing "wrap around services" such as housing outreach and healthcare coordination, trash collection, maintenance services and security.

1.8 The Preliminary Injunction was to remain in place until: (1) the Center for Disease Control ("CDC") withdrew, rescinded, or otherwise modified its COVID-19 Interim Guidance recommending against clearing homeless encampments; (2) the Parties entered into a settlement of the Lawsuit; or (3) the Preliminary Injunction was dissolved or modified by the Court, whichever occurred first.

1.9 On February 28, 2022 the Court held a Case Management Conference. (Dkt. No. 66.)

1.10 On March 2, 2022 the Court issued its pre-trial order setting a trial date of April 24, 2023. (Dkt. No. 67.)

1.11 On May 17, 2022, the Parties met with Judge Illman to negotiate the terms of the settlement of the Lawsuit as set forth herein.

2. **Terms of Settlement.**

2.1 Dismissal of the Lawsuit. Within 30 days of the date the ordinance amendment described in paragraph 2.6 below becomes effective, the Parties will jointly prepare and file a stipulated dismissal order for the Court's signature dismissing the Lawsuit with prejudice. The dismissal order will include all Parties' consent to transfer this case for all purposes to Magistrate Judge Robert Illman of the U.S. District Court for the Northern District of California.

2.2 Preliminary Injunction. Immediately upon entry of the signed stipulated dismissal order, the Preliminary Injunction shall be dissolved and be of no further force or effect, except as provided in this Agreement.

2.3 Temporary Camp. The City agrees to keep the Temporary Camp in place for the two (2) years immediately following entry of the stipulated dismissal order.

2.3.0 The City Manager shall appoint a representative to oversee and operate the Temporary Camp. The City Manager's representative ("CM Representative") will collaborate with and reasonably consult the Union Designee (as identified in Section 2.9) regarding Temporary Camp operations. Except in those situations where a decision is necessary to mitigate or avoid an immediate or imminent threat to the public's or Temporary Camp's residents' health or safety, in which case the CM Representative shall have the sole authority to make that decision, in the

event a dispute arises between the City Manager's representative and the Union Designee, the matter shall be referred to the City's newly established Housing and Homeless Committee ("Committee") (as described in paragraph 2.4 below) which shall attempt to resolve the matter through a meet and confer process. If the Committee's meet and confer process is unsuccessful, the matter shall be referred to the City Manager for resolution. The City Manager's decision shall be final and binding on the Parties.

2.3.1 If at any time during the said two-year period the City Council makes a finding based on sufficient evidence that it no longer has, or is reasonably able to obtain, funds to continue operating the Temporary Camp and/or to keep the Temporary Camp in place, it shall notify the Union Designee and furnish the Union Designee with the specifics of the City Council's findings. Additionally, the City will deliver the Union Designee at least sixty-days' advance notice of the date the Temporary Camp will be closed and the date the residents will be required to vacate the Temporary Camp.

2.3.2 Three months before the expiration of the said two-year period, the City and the Union Designee, with the assistance of the Committee, shall undertake a review of the state of housing and homelessness in the City of Novato and provide the City Council its findings. The City Council shall determine whether there is need and sufficient funds to continue the operation of the Temporary Camp. The

continued operation of the Temporary Camp beyond the two-year period specified in this Agreement shall be at the sole discretion of the City Council.

2.3.3 During the two-year period all persons residing in the Temporary Camp will be subject to the following:

(a) The City will maintain the Temporary Camp as laid out in the Encampment Map attached to the Preliminary Injunction as Exhibit B. The City may make reasonable modifications to this Encampment Map and the facilities shown thereon. All proposed modifications shall first be shared with the Union Designee. Should the Union Designee disagree with a proposed modification, the matter shall be referred to the Committee which shall attempt to resolve the matter through a meet and confer process. If the Committee's meet and confer process is unsuccessful, the matter shall be referred to the City Manager for resolution. The City Manager's decision shall be final and binding on the Parties. The City will not reduce the number of campsites in the Temporary Camp unless utilization of the funds described in paragraph 2.5 to provide housing at the Temporary Camp results in a reduction in the number of living spaces in the Temporary Camp;

(b) If an authorized resident of the Temporary Camp ("Sheltered Camper") has vacated his/her space for 30 consecutive days without notifying the City (before or during that 30-day period) that she/he intends to return to his/her space immediately after the conclusion of said thirty-day period, then the Sheltered Camper shall be conclusively presumed to have permanently vacated his/her space. If the Sheltered

Camper cannot be located after the 30 consecutive day period, and he/she has not notified the City of the intent to return as aforesaid, the City may then remove that Sheltered Camper's tent and other personal property located in the Temporary Camp. Before removing personal items, the City shall attempt to locate the Sheltered Camper who the City believes owns the items and who has vacated the Temporary Camp and provide a reasonable opportunity for the Camper to reclaim the items. The City will store removed non-perishable items that do not constitute a health and safety risk for an additional period of seven (7) days. The Union Designee may be physically present, if available, during any such removal action by the City. At any time during the thirty-day waiting period or the seven-day storage period, the owner of the stored items may retrieve their personal property and may be accompanied by the Union Designee, if so desired, during the retrieval process;

(c) No storage of items shall be allowed outside the perimeter of the Temporary Camp. Personal items left outside the Temporary Camp over 48 hours are subject to being collected and discarded by the City, but only after an attempt to locate the owner has been made, and if located, the owner has been given the opportunity to reclaim or challenge the discarding of the objects. If desired, any such owner may be accompanied by the Union Designee when meeting with the City;

(d) The residents of the Temporary Camp are responsible for maintaining clear walkways within the Temporary Camp. Should any

item block ADA access or an evacuation route, the City may take immediate action to relocate the item to an appropriate area within the Temporary Camp. If the item cannot be reasonably relocated, the City may remove the item and will store it for seven (7) days, and if the item is not claimed and recovered by its owner within said seven (7) days, the City can discard it. If removal is necessary, the City will promptly notify the Union Designee of the removal and work with the Union Designee to identify the owner of the item before discarding the item;

(e) All persons residing in the Temporary Camp must adhere to the Code of Conduct attached to the Preliminary Injunction as Exhibit D. The City shall have the right to enforce all provisions of the Code of Conduct as allowed by law. Persons who fail to abide by the Code of Conduct may be required by the City to leave the Temporary Camp after being afforded advanced notice and opportunity to be heard, and if they should they so desire, to be accompanied by the Union Designee at any such meeting with the City;

(f) The City may send outreach workers into the Temporary Camp to offer services to the occupants of the Temporary Camp and placement at New Beginnings Center or any other housing opportunity that may become available. Residents of the encampment approached by outreach workers shall have the right, if so desired, to have the Union Designee present during such contacts. Police officers shall not provide such outreach;

(g) Only donations of food, clothing or small essential personal items may be accepted and brought into the Temporary Camp by Sheltered Campers; however, the City shall not be responsible for, or liable for, the safety, quality, use or disposal of any such items brought into the Temporary Camp. No large item donations will be allowed, unless specifically permitted by the City, which shall not unreasonably withhold such permission.

2.3.4 The City will take reasonable steps to ensure that vacant campsites within the Temporary Camp will be made available for occupancy to qualified homeless persons.

2.3.5 The Committee, once formed and approved by the City, shall create a list of criteria to be applied to determine whether a person is qualified to occupy a vacant space in the Temporary Camp ("Eligibility List") and shall present its proposed Eligibility List to the City Council. The final Eligibility List criteria shall be subject to the approval of the City Council.

2.3.6 The CM Representative shall review all potential new residents of the Temporary Camp to determine, based on the approved Eligibility List, whether to accept or deny an application to fill a vacant campsite within the Temporary Camp.

2.3.7 The Union Designee may recommend persons to occupy a vacant campsite. To do so, the Union Designee must notify the CM

Representative of the recommendation accompanied by the Union Designee's findings that the person meets the criteria of the Eligibility List.

2.3.8 The Union Designee shall notify the CM Representative of any vacancy at the Temporary Camp within twenty-four (24) hours of the creation of the vacancy.

2.3.9 Should the CM Representative make findings the Union Designee's recommended resident does not meet the criteria of the Eligibility List, the Union Designee may dispute the CM Representative's findings within three (3) calendar days after the Union Designee's receipt of the CM Representative's findings. Such a dispute will then be referred to the Committee which will attempt to resolve the matter through a meet and confer process developed by the Committee, which will thereafter make a recommendation to the City Manager. Failure of the Union Designee to timely dispute the CM Representative's findings shall be conclusively deemed an acceptance of those findings.

2.3.10 If the Committee's meet and confer process does not resolve the dispute, the matter shall be referred to the City Manager for resolution. The City Manager's decision shall be final and binding on the Parties.

2.3.11 If the person who is the subject of the procedures described in paragraphs 2.3.9 and/or 2.3.10 has moved into the Temporary Camp at the time the Union Designee notifies the City the Union Designee is recommending the person to occupy a space in the Temporary Camp, the

person may remain in the Temporary Camp until a final decision has been made as provided by paragraphs 2.3.9 and 2.3.10. If it is determined the person is ineligible to occupy a space in the Temporary Camp, the person shall immediately vacate the Temporary Camp and remove all their personal possessions. If, for some reason the person fails to vacate the Temporary Camp, the City may remove the ineligible person and their possessions from the Temporary Camp. The City agrees to notify the Union Designee before the person and possessions are removed from the Temporary Camp. If desired, the person to be removed shall have the right to have the Union Designee present during said removal.

2.3.12 The Temporary Camp shall operate and the persons who are occupying the Temporary Camp shall abide by the same rules and regulations and terms and conditions set forth in the Preliminary Injunction applicable to the Temporary Camp as set forth in Paragraph 2.3.3 above. A true and correct copy of the Preliminary Injunction is attached as Exhibit A and incorporated by this reference.

2.3.13 The City shall have the right, upon reasonable notice to the Union Designee (see paragraph 2.9 below), to physically inspect the Temporary Camp to determine the Union's and Plaintiffs' compliance with this Agreement.

2.4 Housing and Homeless Committee. The City Council shall establish, by separate action, a Committee comprised of community members, including representatives of the Union, whose purpose will be to

provide information to the City Council regarding housing and homeless issues within the City.

2.4.0 It is envisioned the Committee will be comprised of five to seven individuals, two of whom will be Union representatives. The Committee formation, procedures, frequency of its meetings, the level of staff support, the scope of its advisory duties, and all other matters pertaining to its function, authority and operation shall be decided, as required by law, by the City with input from the Union Designee.

2.4.1 The City may disband the Committee if any of the following events occur: (1) the City does not receive a sufficient number of applications to fill at least five seats on the Committee; (2) the Committee fails to obtain a quorum at three consecutive meetings; or (3) the Union fails to designate individuals to fill the two seats reserved for the Union representatives on the Committee.

2.5 State Funding for Interim Homeless Housing. The City acknowledges it has a one-time opportunity to seek funding from the State of California ("State") for interim homeless housing. The City agrees to apply for, and has applied for, the State funds and, if received, shall use the funds as described by the State within in the City. The City shall meaningfully consult with the Union Designee on the most effective use of the funds that are not subject to specific use restrictions imposed by the State.

2.6 Amendment to City Ordinance No. 1669. The City Council will consider, at a properly noticed and public hearing, amending the

definition of "Critical Infrastructure" set forth in Section 7-11.2 of the Novato Municipal Code as follows: "*Critical Infrastructure* **may be** ~~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."~~

2.6.0 As amended above, Ordinance No. 1669 may be enforced within the City of Novato. The City shall comply with all state and federal laws when enforcing Ordinance No. 1669.

2.6.1 Resolution No. 2021-042 contains the current operative designation of "Critical Infrastructure" within the City of Novato for purposes of Municipal Code Section 7-11.2.

2.6.2 The Parties agree that, if the City intends to make any further amendments to the designation of "Critical Infrastructure" by resolution, it will first consult with those persons within the City of Novato identified by the City as stakeholders, including but not limited to the Union Designee.

2.6.3 The Parties further agree that any proposed amendments to the designation of "Critical Infrastructure," shall be presented to the Housing and Homeless Committee. The Committee shall prepare and submit a recommendation on the proposed amendments to the City Council. The City Council shall consider the Committee's recommendation before adopting any resolution amending the designation of "Critical Infrastructure."

2.7 City Ordinance No. 1670. The Parties agree Ordinance No. 1670 is not in need of amendment and shall be enforceable as codified.

2.8 Legislative Power of the City. The Parties acknowledge the City may not contract away its legislative and governmental functions. (*Stephens v. City of Vista,* (1993) 994 F.2d 650, 655 (9th Cir. 1993), citing *Morrison Homes Corp. v. City of Pleasanton,* 58 Cal.App.3d 724, 734 (Ct. App. 1976).) Nothing in this Agreement is intended to do so.

2.9 Union Representative. The Parties acknowledge and agree that in implementing and performing under this Agreement, the Union represents and speaks on behalf of all Plaintiffs. In dealing with the Union in this Agreement's performance and implementation, the City may rely upon the representations made by, actions of, and positions taken by designated members of the Union ("Union Designee(s)"). The Parties further acknowledge and agree that Union Designee(s) must have and shall conclusively be deemed to have the authority to bind the Union and all Plaintiffs in this Lawsuit (i) to the obligations, promises and representations

imposed upon and made by the Plaintiffs and Union in and under this Agreement and (ii) in the Union's and Plaintiffs' performance of the terms and conditions of this Agreement. The Parties further acknowledge and agree that the City need only communicate with Union Designee(s) and need only rely upon and respond to communications from Union Designee(s) in connection with the Union's and/or the Plaintiffs' performance under this Agreement. The person designated to be the Union Designee for this Agreement shall be Plaintiff Jason Sarris. Any notices and communications to Jason Sarris shall be sent by email or personal delivery and addressed:

Jason Sarris

c/o Law Offices of Anthony D. Prince

2425 Prince Street, Suite 100

Berkeley, CA 94705

Notwithstanding the foregoing to the contrary, if any individual Plaintiff, or newly authorized resident of the Temporary Camp breaches this Agreement or violates the Code of Conduct, the City may proceed against that Plaintiff, or newly authorized resident of the Temporary Camp, directly and without communicating with the Union, unless this Agreement otherwise requires. Any notices and communications to the City shall be sent by email or personal delivery and addressed:

Adam McGill, City Manager

City of Novato

922 Machin Avenue

Novato, CA 94945

2.9.0 Successor Designee(s). If at any time, a Union Designee can no longer serve as Union Designee, the Union Designee who can no longer serve as such shall notify the City of same and the name and contact information of the successor Union Designee, if any.

2.9.1 Dissolution of the Union. Should the Union dissolve, otherwise cease to exist, or fail to appoint a Successor Designee as required by this Agreement, or should the Union Designee fail to perform his/her duties under this Agreement or fail to respond to requests or notices from the City to perform under this Agreement, the City's obligation under this paragraph 2.9 shall cease and anywhere in this Agreement where consultation with the Union or the Union Designee, or notice to the Union or Union Designee, or the presence of the Union or Union Designee or involvement of the Union or Union Designee is required, those requirements are extinguished and may be ignored by the City. The City may execute its binding obligations under this Agreement as it deems appropriate under the then existing circumstances without the need for further consultation with any third party.

3. **General Provisions**

3.1 Enforcement. The Parties shall jointly prepare a stipulated dismissal order expressly requesting this Court agree to retain jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

3.1.0 Should a dispute arise over interpreting this Agreement, the Parties shall first meet and confer to attempt to resolve the matter.

3.1.1 If the meet and confer is unsuccessful, the matter will be referred to the Committee to weigh in on the dispute.

3.1.2 If the Committee's input does not resolve the dispute, the matter will be referred to Judge Illman, or if not Judge Illman, the Court's designee, to resolve the dispute. The decision of Judge Illman (or Court's designee) shall be final and binding on the Parties.

3.2 Termination of Agreement. This Agreement shall terminate two years after the effective date of the Agreement unless the Parties elect to enter into a separate fully executed written agreement at least ten (10) days before the expiration of this Agreement.

3.3 Attorney's Fees. If legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to reimbursement of costs and attorney fees.

3.3 Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the matter set forth herein and may not be altered, amended, or modified, except by a writing duly executed by

all Parties and approved by the Court. All prior agreements and understandings, oral agreements, and writings regarding the matters set forth herein are superseded and are of no further force or effect.

3.4 Independent Advice of Counsel. The Parties represent and acknowledge each has been represented by counsel regarding this Agreement and any matters covered by or related to such Agreement. Each Party represents and acknowledges that it has been advised by its counsel regarding all rights that are affected and/or waived by this Agreement.

3.5 Governing Law. This Agreement shall be construed and interpreted under the laws of the United States, and where applicable, the State of California. If any Party to this Agreement sues to enforce or interpret this Agreement, the lawsuit shall be filed in the Federal District Court, Northern District for the State of California.

3.6 Construction. The Settling Parties shall each be deemed to have participated in drafting this Agreement, and it shall not be construed against each or any of them.

3.7 Amendments in Writing. This Agreement may not be altered, amended, modified, or otherwise changed except by a writing duly executed by each of the Parties. The Parties agree that they will make no claim at any time or place this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

3.8 Severability. If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable, or

contrary to any public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected and shall remain valid and enforceable.

3.9 Counterparts. This Agreement may be executed in counterparts and as so executed, shall constitute an agreement that shall be binding upon all parties, notwithstanding that the signatures of all parties and/or their designated representatives do not appear on the same page. This Agreement may be transmitted by facsimile or other electronic means and the reproduction of signatures by facsimile or other electronic means will be treated as binding as if originals. Any assembly of this Agreement with such signatures shall be deemed an original.

3.10 Authority of Signers. Each person who executes this Agreement on behalf of a government entity, corporation, partnership, joint venture, unincorporated association, trust, or other entity will provide a contemporaneous resolution executed and approved by the governing board or body of the entity which demonstrates that person's authority to sign on behalf of the entity, copies of which shall be attached hereto as Exhibits B and C. Each person so signing represents and warrants to each party he or she has the authority of the governing body, shareholders, members, trustee(s), or beneficiaries of the entity to do so, and agrees to indemnify and hold harmless each other party from any claim that such authority did not exist.

3.11 Effective Date. This Agreement shall become effective upon the date that the stipulated dismissal is filed under paragraph 2.1.

3.12 Fees and Costs. Within 30 days of the date of dismissal of the Lawsuit with prejudice, the City shall issue payment to the Law Office of Anthony D. Prince in the sum of thirty-five thousand dollars ($35,000) as full and final compensation for all attorneys' fees and costs Plaintiffs may claim arising from this Lawsuit.

IN WITNESS WHEREOF, THE PARTIES EXECUTE THIS AGREEMENT ON THE DATES SET FORTH BELOW.

Plaintiff: Marin County Homeless Union

Dated: July 8th 2022

Signature: _____

By Its: President

Plaintiff: California Homeless Union

Dated: July 8, 2022

Signature: _____

By Its: LEAD ORGANIZER and GENERAL COUNSEL

Plaintiff: Camp Compassion

Dated: July 8th 2022

Signature: _____

By Its: Founder

Plaintiff: Jason Sarris

Dated: July 8th 2022

Signature: _____

Plaintiff: Lea DeAngelo

Dated: 7/8/22

Signature: _____

Plaintiff: Zach Boulware

Dated: _____

Signature: _____

Plaintiff: Carrie Healon

Dated: _____

Signature: _____

Plaintiff: Camp Compassion

Dated:_____ Signature: _____

By Its: _____

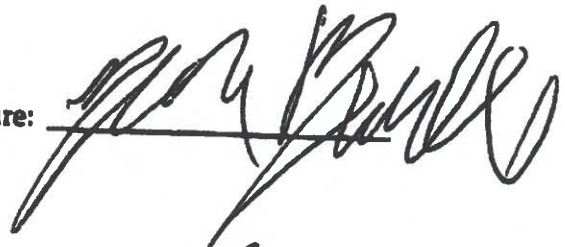
Plaintiff: Jason Sarris

Dated:_____ Signature: _____

Plaintiff: Lea DeAngelo

Dated:_____ Signature: _____

Plaintiff: Zach Boulware

Dated: 7/8/2022 Signature: 

Plaintiff: Carrie Healon

Dated: 7/8/2022 Signature: 

Plaintiff: Lisa Johnson, aka Lisa Nicole Johnson

Dated:_____ Signature: _____

Plaintiff: Donald Hobbs

Dated:_____ Signature: _____

Plaintiff: Deborah Ann Miromontes, aka Deborah Ann Miramontes

Dated:_____ Signature: _____

Plaintiff: Charles Talbot

Dated: July 8, 2022 Signature: 

Plaintiff: Bethany Allen

Dated:_____ Signature: _____

Plaintiff: Michelangelo Montez

Dated: 07/08/22 Signature: 

Plaintiff: Lisa Johnson, aka Lisa Nicole Johnson

Dated: 10/11/2022 **Signature:** ANTHONY PRINCE ATTORNEY FOR LISA JOHNSON

Plaintiff: Donald Hobbs

Dated:_____ **Signature:** _____

Plaintiff: Deborah Ann Miromontes, aka Deborah Ann Miramontes

Dated: 10/11/2022 **Signature:** ANTHONY D PRINCE ATTORNEY FOR DEBORAH ANN MIRAMONTES

Plaintiff: Charles Talbot

Dated:_____ **Signature:** _____

Plaintiff: Bethany Allen

Dated: 7-8-2022 **Signature:** Bethany Allen

Plaintiff: Michelangelo Montez

Dated:_____ **Signature:** _____

Plaintiff: Lisa Johnson, aka Lisa Nicole Johnson

Dated: [illegible] Signature: [illegible]

Plaintiff: Donald Hobbs

Dated: 7/11/2022 Signature: [illegible]

Plaintiff: Deborah Ann Miromontes, aka Deborah Ann Miramontes

Dated: _____ Signature: _____

Plaintiff: Charles Talbot

Dated: _____ Signature: _____

Plaintiff: Bethany Allen

Dated: 7-8-2022 Signature: [illegible]

Plaintiff: Michelangelo Montez

Dated: _____ Signature: _____

Plaintiff: Kalani Welsch

Dated: 7-8-22 Signature: Kalani Welsch

Defendant: City of Novato

By: Adam McGill, City Manager

Dated:_____ Signature: _____

Defendant: City Manager Adam McGill

Dated:_____ Signature: _____

Defendant: Mayor Pat Eklund

Dated:_____ Signature: _____

Defendant: Mayor Pro Tem Eric Lucan

Dated:_____ Signature: _____

Plaintiff: Kalani Welsch

Dated:_____ Signature: _____

Defendant: City of Novato

By: Adam McGill, City Manager

Dated: 9/15/2022 Signature: _____

Defendant: City Manager Adam McGill

Dated: 9/15/2022 Signature: _____

Defendant: Mayor Pat Eklund

Dated: 9/13/2022 Signature: _____

Defendant: Mayor Pro Tem Eric Lucan

Dated: 9/13/22 Signature: _____

Defendant: Chief of Police Mathew McCaffrey

Dated:_____ Signature: _____

Defendant: Public Works Director Chris Blunk

Dated:_____ Signature: _____

Approved as to Form and Content

Jeffrey A. Walter

City Attorney for the City of Novato

Dated: 9-15-22 Signature: _____

Anthony D. Prince

Attorney for Plaintiffs

Dated: _____ Signature: _____

Defendant: Chief of Police Mathew McCaffrey

Dated: 9/14/2022 Signature: _____

Defendant: Public Works Director Chris Blunk

Dated: 9/14/22 Signature: _____

Approved as to Form and Content

Jeffrey A. Walter

City Attorney for the City of Novato

Dated:_____ Signature: _____

Anthony D. Prince

Attorney for Plaintiffs

Dated:_____ Signature: _____

Exhibit B

CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NOVATO AUTHORIZING THE PERMANENT CLOSURE OF THE TEMPORARY CAMP LOCATED IN LEE GERNER PARK PREVIOUSLY REQUIRED BY THE TERMS OF A 2022 SETTLEMENT AGREEMENT BETWEEN THE MARIN COUNTY HOMELESS UNION AND THE CITY OF NOVATO

WHEREAS, the City of Novato ("City") and the Marin County Homeless Union ("Union") entered into a settlement agreement in 2022 concluding litigation filed by the Union against the City related to a City ordinance restricting daytime camping and another prohibiting camping within 50 feet of streambeds or critical infrastructure during the Covid-19 pandemic when the Federal Centers for Disease Control and Prevention (CDC) recommendations required unhoused persons to "shelter in place" to avoid spread of the pandemic (the "2022 Settlement Agreement"); and

WHEREAS, the 2022 Settlement Agreement established a temporary camp in Lee Gerner Park to comply with the CDC recommendations and to conclude the litigation ("Temporary Camp"); and

WHEREAS the 2022 Settlement Agreement required the Temporary Camp be maintained by the City for two years up to October 13, 2024, whereafter the 2022 Settlement Agreement ended by its own terms and continuation of the Temporary Camp, if at all, would be at the sole discretion of the City; and

WHEREAS, the 2022 Settlement Agreement also provided for the creation of a Housing and Homeless Committee whose purpose was to provide information to the City Council regarding housing and homelessness within the City ("Committee"); and

WHEREAS, on July 30, 2024, an arson fire destroyed the Temporary Camp, rendering it uninhabitable and displacing 15 authorized residents of the Temporary Camp; and

WHEREAS, City staff, the County of Marin, and local service provider partners continued to provide services to the displaced campers and procured temporary housing at local motels and shelter beds for the displaced campers; and

WHEREAS, the 2022 Settlement Agreement required the City and the Committee to undertake a review of the state of housing and homelessness in the City and present a report to the City Council before the Settlement Agreement's October 13, 2024 expiration date ("Report"); and

WHEREAS, on September 24, 2024, the City Council and the public were provided with the Report in the agenda for the regular meeting of the City Council occurring that day; and

WHEREAS, at the September 24, 2024 regular meeting, the City Council intended to address the Report to determine, in its sole discretion, whether continuation of the Temporary Camp was needed or economically feasible; and

WHEREAS, the Union requested the matter not be heard at the City Council's regularly noticed September 24, 2024 City Council meeting; and

WHEREAS, the 2022 Settlement Agreement and all terms and conditions required by it thereafter terminated on October 13, 2024; and

WHEREAS, pursuant to a later Court Order, authorized campers displaced by the fire who had not yet found alternative housing were permitted to erect tents in Lee Gerner Park for an additional period of time; and

WHEREAS, the extended period of time permitted by the Court Order has now concluded; and

WHEREAS, the CDC's Covid-19 recommendations are neither operational nor necessary; and

WHEREAS, the City Council finds the reconstruction of the Temporary Camp destroyed by fire is no longer required or economically feasible.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Novato hereby: (i) finds the recitals above are true and correct and are fully incorporated herein, (ii) adopts this resolution, and (iii) approves the permanent closure of the Temporary Camp located at Lee Gerner Park.

* * * * * *

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting thereof, held on the 11th day of February, 2025, by the following vote, to wit:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

_____
City Clerk of the City of Novato

Approved as to form:

_____
City Attorney of the City of Novato