

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NICHOLLE VANNUCCI, et al.,

Plaintiffs,

v.

COUNTY OF SONOMA, et al.,

Defendants.

Case No. 18-cv-01955-VC

**STIPULATION AND ORDER FOR
PRELIMINARY INJUNCTION**

WHEREAS, the plaintiffs Nicholle Vannucci, Ellen Brown, Shannon Hall, individuals, and Homeless Action!, an unincorporated association, hereinafter referred to as “Plaintiffs,” allege that the defendants County of Sonoma (“County”), Sonoma County Community Development Commission (“CDC”), and City of Santa Rosa (“City”), hereinafter referred to as “Defendants,” have engaged in conduct that violates

- the plaintiffs’ rights to be free from cruel and unusual punishment, as guaranteed by the Eighth Amendment of the United States Constitution and Article 1, Section 17, of the California Constitution;
- the plaintiffs’ rights to be free from unreasonable search and seizure, as guaranteed by the Fourth Amendment of the United States Constitution and Article 1, Section 13, of the California Constitution;
- the plaintiffs’ rights to procedural due process, as guaranteed by the Fourteenth Amendment of the United States Constitution;
- the plaintiffs’ rights to be free from a state-created danger, as guaranteed by the Fourteenth Amendment of the United States Constitution;
- the plaintiffs’ right to be free from discrimination based on their disabilities and their right to reasonable accommodation for such disabilities, as provided by Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Fair

Housing Act, and California Government Code §§11135, 12955; and

- the plaintiffs' right to fair housing as provided by the Fair Housing Act, as set forth in Plaintiffs' Supplemental Complaint for Declaratory and Injunctive Relief filed on July 17, 2018;

WHEREAS, Defendants deny these allegations and allege affirmative defenses, as set forth in County and Commission's Answer and Affirmative Defenses filed on August 7, 2018, and City of Santa Rosa's Answer and Affirmative Defenses filed on November 7, 2018;

WHEREAS, Defendants await possible United States Supreme Court review of the Ninth Circuit decision in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), and possible further clarification of the law governing police enforcement of local ordinances against homeless individuals;

WHEREAS, Plaintiffs and Defendants desire, pending potential Supreme Court review of *Martin v. City of Boise*, to stipulate to a preliminary and temporary injunction such that the community, law enforcement, and other employees of Defendants may have the benefit of the Court's supervision during the interim period; and

WHEREAS, the parties desire that litigation be stayed to possibly avoid expense and inconvenience to the parties and witnesses;

IT IS THEREFORE STIPULATED AND ORDERED that defendants County of Sonoma, Sonoma County Community Development Commission, and the City of Santa Rosa are hereby preliminarily and temporarily enjoined as follows:

1. Scope of Injunction

This injunction shall apply to actions taken under the coordination and control of Defendants, including actions taken by the Santa Rosa Police Department, park rangers of the Sonoma County Regional Parks, the parks and recreation departments of the City and the County, other agencies or departments of Defendants that provide services to individuals who are homeless, and entities that contract with one or more Defendants for the provision of services to individuals who are homeless. This injunction does not apply

to the activities of the Sonoma County Sheriff or the Sonoma County Sheriff's Office.

This injunction only applies to actions taken within the Santa Rosa city limits, including any actions taken on unincorporated County property within the city limits.

2. Definitions

- a. A **dwelling** is a shelter, tent, vehicle or other structure where a homeless person sleeps, stores property, and/or regularly engages in other life sustaining activities.
- b. An **encampment** is a collection of five or more dwellings established by homeless people.
- c. **Enforcement action:**
 - i. An enforcement action is (1) issuance of a citation to a homeless person, (2) an arrest by County and/or City personnel of a homeless person, (3) closing or moving a dwelling or encampment; and/or (4) seizing property from a dwelling or encampment pursuant to any of the following statutes or ordinances:
 1. **Santa Rosa City Code §11-22.020**, which provides that it is unlawful for any person to camp, occupy camping facilities, or use camp paraphernalia in any public park, on any public street, or on any other public property.
 2. **California Penal Code §647(e)**, which provides that it is a misdemeanor to lodge in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or the person entitled to the possession or in control of it.
 3. **Santa Rosa City Code §11-20.100**, which provides that no person shall park or cause, allow, permit, or suffer any vehicle registered in his or her name or operated or controlled by him or her to be parked on any street or alley for more than a period of 72 consecutive hours.
 4. **Sonoma County Code §19-15**, which provides that it shall be unlawful for any person or persons to camp in any public park, on any public street, or on any other public property, except in a designated public campground or by authority of a written permit issued by the County.

ii. An enforcement action shall not include, and this injunction shall not apply to, closing a dwelling and/or encampment, issuing a citation, and/or arresting a homeless person based on conduct that would be unlawful regardless of someone's homeless status and regardless of whether they have a dwelling, such as actions taken pursuant to the following statutes and ordinances:

1. **Santa Rosa City Code §§10-04.010** (possession or consumption of alcohol on public property), **10-08.010** (public excretion), **10-12.010** (obstruction of public passages), **10-36.100** (aggressive panhandling), **9-12.050(A)** (littering).
2. **California Fish and Game Code §5652**, which makes it unlawful to deposit, permit to pass into, or place where it can pass into the waters of the state, or to abandon, dispose of, or throw away, within 150 feet of the high water mark of the waters of the state, any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, litter, refuse, waste, debris, or the viscera or carcass of any dead mammal or bird.
3. Various sections of the California Vehicle Code, including, but not limited to, sections pertaining to vehicle licensing, registration, and abandonment on a roadway.

iii. An enforcement action shall not include, and this injunction shall not apply, to a direction to relocate, a citation, and/or an arrest against a homeless person on private property.

d. **Public Property** is any property owned by Defendants or another government entity that is normally open to the general public where the City and/or County park rangers have law enforcement jurisdiction. "Public property" does not include the following:

- i. A school;
- ii. Property for which a permit must be acquired for members of the public to use it;
- iii. Property which is locked, fenced, and posted as "No Trespassing"; and/or

- iv. Property which is subject to a leasehold interest or other possessory interest of a nongovernmental lessee, licensee, or manager that is operated as a private business.
- e. **Adequate shelter**, as required in Paragraph 3(a)(iii) below, may be permanent supportive housing or an emergency placement (including, but not limited to, shelter beds, transitional housing, and hotel vouchers). The adequacy of a shelter will depend on a person's individual circumstances, such as mental disability, physical disability, gender, sexual orientation, gender identity, essential personal possessions, family status, possession of a service animal or pet, religious or ethical convictions, educational needs of any school-aged children, proximity to employment, proximity to medical or other social services, and transportation needs. For some people (particularly those with certain mental health conditions), a barracks-style placement may not be adequate based on their individual circumstances. Adequacy will also depend on the conditions of the facility, including whether it presents health or safety risks. An adequate shelter placement must meet the following criteria:
 - i. The shelter must be immediately available for 30 consecutive days or more;
 - ii. A person must reasonably be able to timely travel there for free from the location of their dwelling, whether independently or with assistance from Defendants;
 - iii. The shelter must be open both days and nights;
 - iv. The shelter must offer beds, not merely mats on a floor;
 - v. The shelter must not require a person to be placed in a separate facility from their spouse, partner, children, or parents, or from a caregiver on whom the person relies for disability-related reasons;

- vi. The shelter must provide a single-gender placement for someone who objects to a mixed-gender placement; and
 - vii. The shelter must make reasonable accommodations suitable to the disability-related needs of the person.
- f. **Assessment**, as used in Paragraph 3(a)(ii) below, shall:
- i. Be conducted by homeless outreach staff trained by Defendants, or an entity under contract with one or more of the Defendants; and
 - ii. Not be conducted in the immediate presence of law enforcement personnel unless requested by staff due to documented safety concerns.

3. Limitation on Enforcement Actions

- a. Except in the event of an immediate hazard or obstruction, as defined in Paragraph 3(c)(i) below, no enforcement action shall be taken against a person on public property who identifies him or herself as experiencing homelessness without first:
 - i. Providing the person with written notice of their applicable rights as established by law and this injunction, including the availability of a grievance process;
 - ii. Providing an opportunity for assessment by trained homeless outreach staff through Sonoma County's Coordinated Entry Program;
 - iii. Providing an opportunity to be placed in adequate shelter reasonably suitable to the disability-related needs of the person; and
 - iv. If the offer of adequate shelter is refused, and the person does not otherwise have access to temporary housing, providing the person with a reasonable opportunity to relocate.
- b. If an individual has undergone a previous assessment, but circumstances since their last assessment have changed, then he or she must be provided an opportunity for a new assessment by trained homeless outreach staff.

- c. In the case of an immediate hazard or obstruction, an enforcement action may be taken without following the procedures outlined in Paragraphs 3(a) and 3(b).
 - i. An immediate hazard or obstruction is one where the homeless individual is at risk of imminent injury or death, or their presence (1) creates a risk of imminent injury or death to others, (2) creates a risk of damage to the property of others, or (3) interferes with access to or use of public facilities. Examples include camping on highway shoulders, off ramps, areas exposed to moving vehicles, areas prone to flash floods, areas that bar the passage of pedestrians or cause pedestrians or wheelchair-bound individuals to detour into a street, and/or camping that presents a risk of fire or other public health hazard.
 - ii. Even in the event of an immediate hazard or obstruction, law enforcement shall nonetheless attempt, whenever possible, to provide advance notice to dwelling occupants of the intent to clear the dwelling or encampment. In addition, law enforcement shall consider requiring occupants to eliminate or mitigate the hazard as an alternative to closing the dwelling or encampment.
 - iii. In the case of a vehicle, an immediate hazard or obstruction is one where the vehicle appears to be abandoned; is illegally parked (other than in violation of Santa Rosa City Code § 11-20.100); poses a safety, fire, or health hazard; interferes with the line of sight for safe travel by other vehicles, bicycles, or pedestrians; or is in violation of California Vehicle Code provisions such as proper licensing and registration; so long as the removal is consistent with the Fourth Amendment.
 - iv. Nothing in this order shall preclude law enforcement personnel from taking reasonable action in response to suspected criminal activity.

4. NOTICE

a. Notice of Enforcement Actions

Before an enforcement action is taken, advanced written notice must be given at a reasonable time and in a reasonable manner to give people sufficient time to collect and move their items. As specified in Paragraph 3(a)(i), the notice must apprise the person of their applicable rights as established by law and this injunction.

b. Notice Following Removal of Property

After removal of unattended property, Defendants shall place a post-removal notice in the area from which the items were removed advising the owner of where the property is stored and how it can be claimed.

5. SEIZURE AND STORAGE OF PERSONAL PROPERTY

a. Unattended Items

- i. Unattended personal items shall be collected, bagged and tagged, recorded, and stored for up to 90 days for retrieval. Only items listed below under “Items that will be Discarded” may be discarded immediately. Defendants will place a Post-Removal Notice in the same area from which the items were removed stating how, where, and when the items may be retrieved;
- ii. Under no circumstances may employees take or keep for themselves unattended personal items or allow other personnel to do the same; and
- iii. Unattended property is different from abandoned property, which may be immediately discarded. In determining if property is abandoned, employees shall evaluate the facts and circumstances surrounding the items.
 1. Unattended property is not abandoned if it is accompanied by signs of ownership, such as a tent that is filled with personal belongings,

or items that are being stored in an orderly manner. In addition, if there is a third-party present who states that he or she has been designated to watch or secure the items during the owner's temporary absence, the items are not considered abandoned.

2. Abandoned items are unaccompanied by objective signs of ownership. Examples include an empty or broken tent sitting by itself on a sidewalk with no other belongings, a bag of clothes open and strewn across a sidewalk, or items that are broken, disheveled, or surrounded by trash or other signs of neglect.

b. Attended Items

- i. Upon commencement of an enforcement action against a homeless individual, employees shall provide the owner sufficient time to collect and move their belongings, taking into account any special needs that individual may have and the volume of his or her belongings;
- ii. If the owner is unwilling or unable to collect and move his or her belongings, Defendants shall give oral notice that the items will be collected if they are not moved by the owner. After waiting a reasonable period of time following the oral notice, Defendants may then bag and tag unremoved belongings; and
- iii. If attended items are bagged and tagged, the employee shall provide the owner with information on how and where the items may be retrieved from the storage facility.

c. Items That May Be Discarded

- i. The following items may be discarded:
 1. Items that present an immediate health or safety risk, such as toxic sharps, chemicals, and bedding or clothing that is soiled by infectious materials, human waste, body fluids, mold or mildew.

2. Items that are infested by rodents or insects.
 3. Furniture, mattresses, sheds, rolling structures, or bulky items. A bulky item is a single item that does not fit in a 60-gallon container with the lid closed.
 - a. Bulky items do not include a tent, an operational walker, an operational wheelchair, operational crutches, or an operational bicycle.
 4. Perishable items or perishable food.
 5. Illegal items.
 6. Trash, garbage, and/or debris.
 7. Abandoned property as defined above.
- ii. If personal belongings are co-mingled or littered with needles, human waste, or other health risks, officers may dispose of the entire pile of belongings. Officers are not required to sort through and attempt to remove the health or safety risks.

6. Storage

- a. Personal items shall be stored at a location to be designated by Defendants. While stored the property can be claimed by their owners Monday through Friday, 9:00 a.m. to 3:00 p.m.
- b. After 90 days, unclaimed items may be discarded.
- c. To claim their property, owners must provide satisfactory proof of ownership, i.e. describing the location of the items when collected or describing the specific items that were collected. No government or photo identification will be required.
- d. No fee shall be charged for the temporary storage of items.

7. Grievance

Defendants will require their contractors to have an operational grievance process. Defendants shall publicize and make available the grievance processes used by their contractors, through which homeless individuals can contest the suitability of

their shelter placement and/or the reasonable accommodations they were provided. Defendants in their respective roles in the Leadership Council shall attempt to develop a county-wide grievance policy and procedure consistent with the terms and intent of this Order.

8. Certain Individuals Ineligible for Placement

If homeless outreach staff determines that a person is ineligible for all available placement options because the person is barred from the available facility or facilities, staff must make a reasonable effort to determine whether the bar can be lifted. If, after good faith consideration, the bar cannot be lifted, then enforcement may proceed.

9. Policies and Procedures

Each defendant shall maintain written policies for conducting enforcement actions and for interacting with people who are homeless. These policies shall be consistent with the terms of this Order and shall emphasize the goals of treating homeless people with dignity and compassion. Each Defendant shall distribute these policies to all relevant staff and shall provide training to staff on the policies within three (3) months of the entry of this Order.

10. Reporting and Other Ongoing Efforts

Defendants will, with the guidance of the Leadership Council, develop a mechanism for publicly reporting data regarding enforcement activities that promotes transparency without divulging personal information about the people involved. Types of information reported may include: (i) data on the number of enforcement actions; (ii) data on the number of people affected by each enforcement action, including arrests, citations, and voluntary relocations; and/or (iii) data on the disability-based accommodations that are requested, granted, and denied; and/or (iv) data on the grievance process. While the temporary injunction

is in place, the Court and the parties will have a case management conference every three months to discuss implementation of the injunction.

11. Training

Defendants shall implement a training program for staff who regularly interact with people experiencing homelessness within three (3) months of the entry of this Order. The details of the training programs are within the Defendants' discretion, but they must be consistent with the terms of this order. The training shall include information regarding reasonable accommodations and principles of trauma-informed care. Defendants shall require any contract partners involved in the provision of services to homeless individuals to implement a similar training program, or to require their staff to attend training programs run by Defendants.

12. Limitation on Plaintiffs' Conduct

Plaintiff Homeless Action!, its affiliated members, and each of the individually named plaintiffs in this action agree to follow and utilize the procedures set forth in this order in good faith, and will encourage other homeless individuals to do the same when interacting with Defendants.

13. Duration of Injunction and Continuing Jurisdiction of the Court

- a. This preliminary injunction shall go into effect 30 days after issuance of the order.
- b. The preliminary injunction shall remain in effect until June 30, 2020.
- c. Should specific conflicts arise regarding implementation of the terms of this preliminary injunction, the Court shall retain jurisdiction to enforce the terms of this Order and/or to clarify the terms of the injunction. Such determinations shall be restricted to interpreting and applying the preliminary injunction, and shall not be binding in the event the litigation stay is lifted.
- d. If one party believes that another party is systematically undermining or failing reasonably to abide by the terms of this preliminary injunction and the parties have been unable to resolve the dispute, that party may move to enforce or clarify the

terms of the injunction. A party may only do so after providing the other parties written notice of the alleged violation and engaging in a meet and confer session with the other parties.

- e. If a party believes that a modification to the preliminary injunction is required, the parties must meet and confer to ascertain whether the parties will stipulate to a modification. If that fails, the party may, for good cause, seek modification of the terms of the injunction.
- f. For non-urgent disputes arising under the injunction, the moving party should file a noticed motion in accordance with the Court's standard rules for doing so. If the relief being requested is time-sensitive, the party seeking relief should file a letter that prominently indicates that immediate relief is request. The Court will adjudicate that request by following the procedures in its standing order for addressing temporary restraining orders (meaning that it will not order relief without first seeking a response from the other side, and will order a hearing if needed).
- g. The injunction can be dissolved at any point with the consent of all parties.
- h. If unforeseen circumstances arise and a party believes that the preliminary injunction is no longer viable, that party may file a motion to dissolve the injunction after engaging in a meet and confer session with the other parties.
- i. If the Court determines that one side's position or conduct in connection with a dispute arising under the preliminary injunction is wholly without merit, it may require the losing side in the dispute to pay the other side's costs and fees incurred in litigating it.

14. No Admission of Liability or Entitlement to Fees

The parties are voluntarily entering this stipulation and stay as a temporary compromise without any admission of liability or wrongdoing on the part of Defendants. Stipulation to this preliminary injunction shall not be deemed a waiver

by Defendants of the right to contest Plaintiffs' legal claims or to oppose any later request for attorneys' fees or costs by Plaintiffs or their counsel. Issuance of a preliminary injunction pursuant to this stipulation shall not entitle Plaintiffs to any claim for attorneys' fees or costs and shall have no bearing on whether Plaintiffs are the prevailing party for purposes of any later determination of whether Plaintiffs shall recover attorneys' fees or costs.

15. Stay of Litigation

Upon issuance of this preliminary injunction, the trial date and all pre-trial deadlines shall be vacated and all litigation shall be stayed during the duration of the preliminary injunction.

DATED: July 12, 2019

THE PUBLIC INTEREST LAW PROJECT
CALIFORNIA RURAL LEGAL ASSISTANCE
LAW OFFICES OF ALICIA ROMAN

By: /s/ Melissa A. Morris
MELISSA A. MORRIS, Attorney for Plaintiffs

DATED: July 12, 2019

SONOMA COUNTY COUNSEL'S OFFICE

By: /s/ Matthew R. Lilligren
MATTHEW R. LILLIGREN, Attorney for
Defendants County of Sonoma; Sonoma County
Community Development Commission

DATED: July 12, 2019

SANTA ROSA CITY ATTORNEY'S OFFICE

By: /s/ Robert L. Jackson
ROBERT L. JACKSON, Attorney for Defendant
City of Santa Rosa

Good cause existing, IT IS SO ORDERED.

DATED: July 12, 2019



The Honorable Vince Chhabria