

1 Anthony P. Condotti, City Attorney, SBN 149886

acondotti@abc-law.com

2 Catherine Bronson, Deputy City Attorney, SBN 267527

cbronson@abc-law.com

3 Stephanie M. Duck, Deputy City Attorney, SBN 324429

sduck@abc-law.com

4 ATCHISON, BARISONE & CONDOTTI

A Professional Corporation

5 PO Box 481

Santa Cruz, CA 95061

6 Telephone: (831) 423-8383

7 Facsimile: (831) 576-2269

8 Attorneys for Defendants

9 CITY OF SANTA CRUZ, MARTIN BERNAL, TONY ELLIOT, and ANDREW MILLS

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN JOSE DIVISION

13
14
15 SANTA CRUZ HOMELESS UNION, on
behalf of itself and those it represents;
16 SANTA CRUZ FOOD NOT BOMBS;
ALICIA AVALOS, HANNAH HEGEL,
17 CHRIS INGERSOLL and RANDOLPH
TOLLEY, on behalf of themselves and
18 similarly situated homeless persons,

19 Plaintiffs,

20 vs.

21
22 CITY OF SANTA CRUZ; MARTIN
BERNAL, individually and in his official
23 capacity as City Manager for the City of Santa
Cruz; TONY ELLIOT, individually and in his
24 capacity as Director of Parks & Recreation for
the City of Santa Cruz; ANDREW MILLS,
25 individually and in his capacity as Chief of
Police for the City of Santa Cruz,

26 Defendants.
27
28

Case No. 5:20-cv-09425-SVK

**DEFENDANTS' ADDITIONAL STATUS
REPORT**

Honorable Magistrate Judge Susan van Keulen

Hearing Date: March 30, 2021
Hearing Time: 9:30 a.m.

1 **DEFENDANTS’ ADDITIONAL STATUS REPORT**

2 Defendants submit this additional status report following the March 17, 2021 status conference,
3 in which the Court permitted the parties to submit evidence as to: (1) whether the Benchlands was likely
4 to flood after April 1, 2021, (2) the status of the County’s efforts to vaccinate unsheltered individuals
5 within the City, and especially those unsheltered individuals residing at San Lorenzo Park. Dkt. 42.
6 The Court also permitted the parties to submit an additional status report no more than 5-pages.

7 **I. Potential for Flooding in Benchlands Post April 1, 2021**

8 The concurrently submitted Declaration of Santa Cruz Fire Chief, Jason Hajduk, details the
9 history of flooding in the Benchlands, current soil conditions, along with an outlook for future weather
10 conditions in the Santa Cruz region that could impact the Benchlands. In sum, it is very unlikely that the
11 Benchlands will flood after April 1, 2021. In the past twenty-one years, SCFD departmental recollection
12 is that the Benchlands has flooded only four times, and none of those four flooding events were after the
13 month of March. Hajduk Decl., ¶ 6.

14 Flooding in the Benchlands occurs when soils are already highly saturated due to heavy and
15 continuous rainfall. Hajduk Decl., ¶ 8. Current soil conditions in the Benchlands, while moist, are not
16 saturated at a level that could give rise to flooding. Hajduk Decl., ¶ 9. The Northern California region is
17 still in drought status and experienced below normal precipitation in most areas for the month of
18 February. Hajduk Decl., ¶ 4. This overall drier and warmer weather pattern is expected to continue
19 through June 2021 due to the ongoing La Niña weather pattern. *Id.* The overall lack of soil saturation
20 along with the prediction for drier and warmer weather through June 2021 suggests that any flooding in
21 Benchlands this spring is unlikely. *Id.*

22 The Santa Cruz Fire Department also closely monitors weather predictions from the National
23 Oceanic and Atmospheric Administration’s National Weather Service for the Santa Cruz region,
24 including extended forecasts and expected precipitation. Hajduk Decl., ¶ 10. While not expected this
25 spring, the City would have advance notice of any forecasted storm or rain event and would be able to
26 provide a minimum of 24-72 hours advance notice to campers in the Benchlands of such an event and
27 any potential for flooding. *Id.* Again, however, given current soil conditions at the Benchlands, along
28

1 with the predicted warm and dry weather, it is highly unlikely that the City would need to move campers
2 from the Benchlands due to potential flooding.

3 **II. Vaccination of Unsheltered Individuals in the City of Santa Cruz**

4 Vaccines are already quite available to homeless individuals of all ages within the City of Santa
5 Cruz. *See* Bronson Decl., ¶ 4. Specifically, the “HPHP is implementing multiple strategies based on
6 best practices” including:

- 7 1. Homeless Person Vaccine Clinics: every Tuesday and Thursday morning from 9am-
8 11:30am. Walk-in accepted, but appointments are preferred. Vaccination clinics began in
9 January with patients over 75 years old, then over 65 years old, and are currently for anybody
10 experiencing homelessness 16 years and older. ***Right now, there is almost no waiting***
11 ***period. Persons experiencing homelessness who call today are scheduled for the next***
12 ***available vaccine clinic.*** These vaccine clinics use all three vaccines, but for first doses
13 HPHP is now mostly using the J&J single shot vaccine. HPHP currently has the capacity to
14 administer 150 doses on Tuesday, and 150 doses on Thursday. *See* Bronson Decl.
- 15 2. Shelter “Pop-Up” Clinics. *Id.*
- 16 3. Street Medicine Teams: The Homeless Persons Health Project’s Street Medicine Teams are
17 deployed to vaccinate people experiencing homelessness at encampments and other public
18 spaces, including San Lorenzo Park. The Street Medicine Teams have already vaccinated at
19 San Lorenzo Park at least twice, and they vaccinate every Thursday, if they have capacity to
20 do so, during routine street medicine visits on Thursdays from 10-12. *Id.*

21 While the County could not provide information as to exactly how many San Lorenzo Park
22 encampment residents had been vaccinated, or what percentage of San Lorenzo Park encampment
23 residents had been vaccinated, we know that HPHP, which is just one provider serving the unsheltered
24 population, has vaccinated well over 1,000 individuals, including some staff and healthcare providers, to
25 date. The 2019 point-in-time count indicates that there are 2,167 individuals experiencing homelessness
26 in Santa Cruz County. *Id.*

27 ///

28 ///

1 **III. At this Juncture, the Court Should Simply Dissolve the Injunction, Given the Much**
2 **Improved COVID Situation in the County and the Fact that Vaccines are Already**
3 **Easily Available to Unsheltered Individuals in the City.**

4 The COVID situation is improving every single day in Santa Cruz County, for example:

- 5 • Santa Cruz County will move into the “orange” tier of COVID restrictions next week. *See*
6 <https://www.ksbw.com/article/santa-cruz-monterey-orange-tier-california-health/35917627#>.
- 7 • Vaccines are already easily available to City’s unsheltered community. Many unsheltered
8 individuals have already been vaccinated, and for those who have not yet received the
9 vaccine, these unsheltered individuals may make an easy, no-wait appointment at a
10 Tues/Thurs vaccine clinic (located 1 mile from San Lorenzo Park) OR they may obtain a
11 vaccine through street outreach, which occurs every Thursday. *See* Bronson Decl., ¶ 4-5.
- 12 • The majority of vaccines currently being distributed to the unsheltered population in the City
13 are the J&J single-shot vaccine, requiring no follow-up. Bronson Decl., ¶ 5.
- 14 • Daily new COVID-19 case counts, County-wide are in the single-digits. *See*
15 [https://www.santacruzhealth.org/HSAHome/HSADivisions/PublicHealth/CommunicableDis](https://www.santacruzhealth.org/HSAHome/HSADivisions/PublicHealth/CommunicableDiseaseControl/CoronavirusHome.aspx)
16 [easeControl/CoronavirusHome.aspx](https://www.santacruzhealth.org/HSAHome/HSADivisions/PublicHealth/CommunicableDiseaseControl/CoronavirusHome.aspx) .
- 17 • The State of California just announced that vaccines will be open to every person over 50
18 starting April 1 and every person over 16 starting on April 15. *See*
19 [https://www.nbcbayarea.com/news/california/california-to-expand-covid-19-vaccine-](https://www.nbcbayarea.com/news/california/california-to-expand-covid-19-vaccine-eligibility/2502564/)
20 [eligibility/2502564/](https://www.nbcbayarea.com/news/california/california-to-expand-covid-19-vaccine-eligibility/2502564/).

21 On the other hand, the impacts of the encampment on neighbors remain dire. Previous evidence
22 submitted to the Court described multiple overdose deaths, violent crime, open drug use, open
23 defecation, threatening behavior, vandalism, and damage to property. The facts, at this juncture, simply
24 do not support a deliberate indifference / state created danger claim, in which:

25 a court must decide the related issues of whether the danger to which the
26 defendant exposed plaintiff was known or obvious, and whether [defendant] acted with
27 deliberate indifference to it. . . . Deliberate indifference is a stringent standard of fault,
28 requiring proof of 1) an unusually serious risk of harm, 2) defendant's actual knowledge of
(or, at least, willful blindness to) that elevated risk, and 3) defendant's failure to take
obvious steps to address that known, serious risk. . . . In addition, a plaintiff pursuing a
danger creation claim must establish that the defendant is the proximate cause of his or her
injuries. This so-called "foreseeability analysis" is widely accepted as the conventional
analysis for determinations of proximate cause.

29 *Sanchez v. City of Fresno*, No. 1:12-CV-00428-LJO-SKO 2014 U.S. Dist. LEXIS 67863, *31-32
30 (citations omitted). At this time, there is no unusually serious risk of COVID-19 related harm associated
31 with disbanding the San Lorenzo Park encampment. A COVID-19 vaccine is already readily available
32

1 to all unsheltered individuals in the City who want it. The City cannot force unsheltered individuals to
2 take the vaccine, nor is the City responsible for vaccine administration.

3 At this juncture, any unsheltered individual who alleges to have acquired COVID-19 as a result
4 of an encampment closure could not establish that the City was the proximate cause of his/her injuries.
5 The City did not create COVID-19 or the homelessness crisis. Moreover, with safe and effective
6 vaccines already reasonably available to the homeless population, it is not the City's legal responsibility
7 to make sure that unsheltered individuals accept or obtain the vaccine through one of the many options
8 already reasonably available to them within the City.

9 To much of the Santa Cruz community, it appears that the Court is only considering the largely
10 theoretical COVID-19 related potential harm to unsheltered individuals that could be caused by closing
11 the encampment, while at the same time turning a blind eye to the real, tangible harms caused by leaving
12 the encampment open. Plaintiffs have not presented evidence that unsheltered individuals in the City of
13 Santa Cruz have died or faced serious health consequences from COVID-19. But, the City has
14 presented evidence of drug overdose deaths, attempted murder, sexual assault, other major crimes,
15 vandalism, a serious degradation of the quality of life of nearby neighbors, and the list goes on and on.

16 With these real, verified harms in mind and vaccines already reasonably available to unsheltered
17 people in the City, it cannot be said that a closure of San Lorenzo Park, to address the numerous health
18 and safety impacts there, amounts to "deliberate indifference".

19 **IV. The City's Compromise Proposed Order**

20 In a previous filing, the City identified a potential compromise if the Court is not inclined to fully
21 dissolve the preliminary injunction at this time: namely, the Benchlands portion of San Lorenzo Park
22 could be used for up to 122 individually marked camping sites, but all other areas not demarcated as
23 camp spots must be kept clear from encampments. Dkt. 37, p. 9. It is worth noting there that the City is
24 not optimistic that this will dramatically improve conditions at the park, but it the plan might at least
25 give neighbors a small amount of relief.

26 The City submits a proposed order, which contains the minimum of what the City can anticipate
27 that it would reasonably require to make this plan even potentially feasible. The major plan elements,
28 contained in the proposed order, include:

- 1 1. A concrete limit to the number of encampments in the San Lorenzo Park / Benchlands area.
- 2 2. An ability to promptly and in an efficient manner remove all encampments in San Lorenzo Park
- 3 and adjacent areas that are not in the Benchlands.
- 4 3. An ability to issue and revoke permits, in an efficient manner, for failure to adhere to community
- 5 rules.
- 6 4. A Code of Conduct and an ability to enforce the Code of Conduct.
- 7 5. A reasonable end-date for when the City could expect to no longer be under the Court’s
- 8 injunction.

9 Additionally, the City’s position is that, regardless of whether the City relocates campers to the
 10 Benchlands, the Court must modify its injunction to clarify that, for the duration of the injunction
 11 period, the City shall be permitted to:

- 12 (a) Enforce Santa Cruz Municipal Code section 13.08.100 in San Lorenzo Park and the
- 13 Benchlands. This Municipal Code section provides the City with a mechanism to require repeat
- 14 offenders at City parks to vacate parks for specified, escalating time periods.
- 15 (b) Pursuant to Penal Code section 372, conduct enforcement action and remove individual
- 16 encampments that constitute a public nuisance, such as encampments that host bike chop shops,
- 17 encampments that are not maintained in a reasonably tidy fashion, and/or encampments that are
- 18 unreasonably large (i.e, encampments that take up a footprint that is larger than 12 feet x 12 feet
- 19 per person).
- 20 (c) Conduct law enforcement action (including, but not limited to issuing infraction and/or
- 21 misdemeanor citations and making arrests) under generally applicable laws, such as prohibitions
- 22 against littering, glass in parks, alcohol in parks, vehicles in parks, fires, and disorderly conduct.

22 Dated: March 26, 2021

22 */s/ Catherine Bronson*
 23 _____
 24 CATHERINE BRONSON
 25 ATCHISON, BARISONE & CONDOTTI APC
 26 Attorneys for Defendants, MARTIN BERNAL, et al.