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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 DIANE FISHER, et al.,
12 Plaintiffs,
13 v.
14 CITY OF BERKELEY, et al.
15 Defendant.

Case No. 3:24-CV-08134-CRB
DECLARATION OF PETER RADU IN
SUPPORT OF DEFENDANT'S
OPPOSITION TO PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER

Hearing:

Date: TBD
Time: TBD

Judge: TBD

Action Filed: November 19, 2024

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DECLARATION OF PETER RADU

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3 I, Peter Radu, declare as follows:

4 1. I have personal knowledge of the facts described herein. If called as a witness, I
5 could and would testify competently and truthfully to the facts set forth in this declaration.

6 2. I am an Assistant to the City Manager for the City of Berkeley (City), and have
7 been in that role since August 2021. In this capacity, I serve as the lead on projects associated
8 with the unsheltered homeless population in Berkeley. I have over thirteen years of experience
9 working with the unhoused population. I was the Homeless Policy Director for the City of
10 Oakland from 2019-2021, and prior to that I served as the Homeless Services Coordinator for the
11 City of Berkeley from 2017 to 2019.

12 3. I received my B.A. in psychology from Stanford University in 2009, and my
13 Master of Social Welfare and Master of Public Policy from the University of California,
14 Berkeley in 2016.

15 4. I have read the Plaintiffs’ Motion for Temporary Restraining Order, and make
16 this declaration in support of the City’s opposition thereto. The correspondence and memoranda
17 referred to in this declaration are kept by the City in the regular course of business, and it is a
18 regular practice to make and retain such records.

19 5. The City has created a Homeless Response Team (HRT) to bring multiple
20 departments together in addressing the needs of the unhoused population. The HRT has
21 representatives from Fire; Police; Public Works; Parks, Recreation and Waterfront;
22 Environmental Health; Parking Enforcement; Health, Housing, and Community Services; and
23 other departments and divisions as necessary.

24 6. In recent weeks, new encampments have arisen across Berkeley. In an article
25 published in The Guardian, organizers of these encampments have stated they have been created
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1 in part for the express purpose of bringing people from other cities, and to attempt to force the
2 City to grant unhoused individuals preferential rights to the public right of way or other public
3 spaces. A true and correct copy of a November 14, 2024 article published in the Guardian,
4 available at [https://www.theguardian.com/us-news/2024/nov/14/california-berkeley-unhoused-](https://www.theguardian.com/us-news/2024/nov/14/california-berkeley-unhoused-protest)
5 [protest](https://www.theguardian.com/us-news/2024/nov/14/california-berkeley-unhoused-protest), is attached hereto as Exhibit A.

6 7. Plaintiff Staci Prado is known to the HRT. Ms. Prado has repeatedly declined
7 both shelter and permanent housing offers made by both the HRT and others over the course of
8 several years. Until late September 2024, Ms. Prado was known to the HRT to reside on Cedar
9 Street just west of 2nd Street in Berkeley. Ms. Prado recently relocated at an encampment near
10 4th Street and Bancroft Way in Berkeley. Upon information and belief, the organization Where
11 Do We Go (formerly Where Do We Go Berkeley) specifically and intentionally established the
12 4th & Bancroft encampment to encourage individuals to move to that area from other
13 encampments in mid-October 2024.

14 8. On November 13, 2024, the HRT posted a “Notice of Encampment Closure for
15 Construction – Beginning November 18” at the encampment located near 4th Street and
16 Bancroft Way in Berkeley. Beginning on November 7, and prior to the posting of the written
17 notice, the staff in my Division performed outreach to the residents at this encampment to inform
18 them verbally of an upcoming encampment closure. The 4th & Bancroft encampment is being
19 closed due to a permitted and shovel-ready construction project; the construction plans call for
20 the closure of the sidewalk on which the encampment is located. As reflected in the November
21 13, 2024 notice, the City informed residents impacted by the closure that personal property
22 would be handled in accordance with City policy, and residents were further informed how to
23 reclaim possessions collected and stored by the City. A true and correct copy of the November
24 13, 2024 notice is attached hereto as Exhibit B. No one camping at the 4th & Bancroft
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1 encampment requested storage or assistance from the City when the notice was posted. The City
2 did receive an email on Friday, November 15, 2024 from Where Do We Go demanding the City
3 rescind this notice and asserting that people in the encampment have disabilities rendering them
4 unable to comply with the notice, yet the City did not receive a specific request for
5 accommodation by or on behalf of any individual camper. If an individual requests assistance to
6 consolidate or store their belongings at the time of closure, City staff may assist consistent with
7 City policy and to the extent the individual’s belongings are not soiled, contaminated, or
8 otherwise unsafe to handle.
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10 9. Within 24 hours of the City posting of the November 13, 2024 notice, my staff
11 found that Ms. Prado had voluntarily vacated the 4th & Bancroft encampment; Ms. Prado
12 voluntarily relocated to her current location in front of the City Corporation Yard, which is
13 approximately 1 mile away from 4th & Bancroft. She did not request any assistance or
14 accommodation from the City prior to moving.
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16 10. Upon information and belief, the organization Where Do We Go established the
17 encampment in front of the City Corporation Yard on November 12, 2024, by specifically
18 encouraging individuals to move there in response to the upcoming closure of the 4th &
19 Bancroft encampment.
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21 11. On November 14, 2024, the HRT posted a “Notice to Vacate” at the City
22 Corporation Yard encampment, informing campers that their encampment violates City
23 “curtilage” requirements, which prohibit structures in or on the exterior grounds of a City
24 building without a City-issued permit. **A Notice to Vacate is not a notice of closure or a threat**
25 **of eviction.** As reflected in the November 14, 2024 notice, the City informed campers that
26 personal property would be handled in accordance with City policy, and campers were further
27 informed how to reclaim possessions collected and stored by the City. A true and correct copy
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1 of the November 14, 2024 Notice to Vacate is attached hereto as Exhibit C. No one camping at
2 the City Corporation Yard encampment requested storage or assistance in moving from the City
3 when the notice was posted. The City did receive an email on Friday, November 15, 2024 from
4 Where Do We Go demanding the City rescind this notice and asserting that people in the
5 encampment have disabilities rendering them unable to comply with the notice, yet the City did
6 not receive a specific request for accommodation by or on behalf of any individual camper. If an
7 individual requests assistance to consolidate or store their belongings at the time of closure, City
8 staff may assist consistent with City policy and to the extent the individual's belongings are not
9 soiled, contaminated, or otherwise unsafe to handle.
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11 12. **The City has no imminent plans to evict Ms. Prado or anyone else from the**
12 **City Corporation Yard encampment.**

13 13. Prior to October 2024, the City had seen only transient and usually solo campers
14 in Ohlone Park. Upon information and belief, the organization Where Do We Go established an
15 encampment in Ohlone Park in Berkeley on or about October 23, 2024 by specifically
16 encouraging individuals to relocate to the park.
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18 14. On November 15, 2024, the HRT posted a "Notice of Violation" in Ohlone Park
19 notifying campers that they were in violation of park rules and the Berkeley Municipal Code,
20 which prohibit placing any structures, including tents, with a footprint of greater than 10 square
21 feet and also prohibit anyone from entering or staying in City parks between the hours of 10pm
22 and 6am. The notice posted in Ohlone Park informs campers of their violations, and it informs
23 campers that personal property would be handled in accordance with City policy as well as how
24 to reclaim possessions collected and stored by the City. **A Notice of Violation is not a notice of**
25 **closure or a threat of eviction.** When HRT staff post a Notice of Violation, they typically print
26 out templates and handwrite the date and location before posting. A true and correct copy of the
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1 Notice of Violation template used by HRT staff for the November 13, 2024 notice posted in
2 Ohlone Park is attached hereto as Exhibit D. No one camping at the Ohlone Park encampment
3 requested storage or assistance in moving from the City when the notice was posted. If an
4 individual requests assistance to consolidate or store their belongings at the time of closure, City
5 staff may assist consistent with City policy and to the extent the individual's belongings are not
6 soiled, contaminated, or otherwise unsafe to handle.

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8 **15. The City has no imminent plans to evict Ms. Fisher or anyone else from the**
9 **Ohlone Park encampment.**

10 16. In late September 2024, I observed new tents starting to appear pitched in front of
11 Berkeley's Old City Hall. Upon information and belief, the organization Where Do We Go
12 established the encampment in front of Old City Hall specifically to encourage individuals to
13 relocate to the area.

14 17. Old City Hall is not occupied by City departments. In the winter months, the
15 building is used by the City in partnership with Dorothy Day House as the Berkeley Emergency
16 Storm Shelter (BESS). Under contract with the City, Dorothy Day House operates BESS to
17 provide—among other things—shelter, meals, access to medical care, and housing support. The
18 City and/or Dorothy Day House must perform work ahead of time to open BESS for the
19 upcoming season on December 2, 2024.

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21 18. On October 30, 2024, I met in person with Andrea Henson, the executive director
22 and legal counsel for Where Do We Go Berkeley, to invite her on a walk-through of the
23 conditions at the Old City Hall encampment to assess operational impacts on the opening of
24 BESS. I invited Ms. Henson based on my experience with her as an encampment leader with
25 whom the HRT can work together to reduce conflict. Ms. Henson accepted the invitation on
26 October 30, 2024 for a walk-through to take place on November 7, 2024. Ms. Henson did not
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1 show up for the walk-through. That same day, I sent Ms. Henson an email identifying four
2 locations I observed around Old City Hall with conditions that needed to be addressed in time to
3 open BESS. Namely:

- 4 a. Two tents are taking up the space needed to install ADA-accessible portable
5 toilets and wash stations.
- 6 b. Tents and other belongings must be removed from the Old City Hall front porch
7 to allow safe passage for clients accessing the shelter. I also observed that
8 someone had illegally tapped into a light pole for electricity at this location.
- 9 c. Tents and other belongings must be moved at least three feet away from the
10 building and completely out of the way of fire suppression equipment for fire
11 safety reasons.
- 12 d. The sidewalks leading to the front steps must be cleared for ADA-accessibility
13 reasons, including to provide a clear path to the portable toilets to be installed
14 nearby.
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17 Approximately two hours later, Ms. Henson responded to apologize for missing the walk-
18 through. She stated she would review my email and get back to me. As of the date of this
19 declaration, Ms. Henson has not further responded to my email, nor have any of the conditions
20 identified been addressed. A true and correct copy of my email exchange with Ms. Henson is
21 attached hereto as Exhibit E.

22 19. If the conditions surrounding Old City Hall are not addressed, it threatens the
23 City's ability to open BESS on time, potentially depriving unhoused Berkeley residents of storm
24 shelter just as the winter season begins.
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1 20. Because attempts to work cooperatively to address the issues with the Old City
2 Hall encampment failed, the HRT posted two “Notices to Vacate.” The first Notice was posted
3 on November 13, 2024 to the tents mentioned above that were interfering with the placement of
4 ADA accessible port-a-potties, notifying campers that they were in violation of park rules and
5 the Berkeley Municipal Code, which prohibit placing any structures, including tents, with a
6 footprint of greater than 10 square feet and also prohibit anyone from entering or staying in City
7 parks between the hours of 10pm and 6am. The second notice was posted on November 15,
8 2024, informing campers that their encampment violates City “curtilage” requirements, which
9 prohibit structures in or on the exterior grounds of a City building without a City-issued permit.
10 As reflected in both notices, the City informed campers that personal property would be handled
11 in accordance with City policy, and campers were further informed how to reclaim possessions
12 collected and stored by the City. The November 13, 2024 notice was issued based on the
13 template attached hereto as Exhibit D. A true and correct copy of the November 15, 2024 notice
14 is attached hereto as Exhibit F. The City did receive an email on Friday, November 15, 2024
15 from Where Do We Go demanding the City rescind this notice and asserting that people in the
16 encampment have disabilities rendering them unable to comply with the notice, yet the City did
17 not receive a specific request for accommodation by or on behalf of any individual camper. If an
18 individual requests assistance to consolidate or store their belongings at the time of closure, City
19 staff may assist consistent with City policy and to the extent the individual’s belongings are not
20 soiled, contaminated, or otherwise unsafe to handle.

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24 21. **As with the notices posted at the City Corporation Yard and Ohlone Park**
25 **encampments, the notices posted at Old City Hall are not notices of closure or threats of**
26 **eviction. The City has no imminent plans to evict Mr. Tayne or anyone else from the Old**
27 **City Hall encampment.**

1 22. Just before 5:00 pm on Friday, November 15, 2024, the City received a hand-
2 delivered letter signed by Yesica Prado and Gordon Gilmore. The letter purports to be written on
3 behalf of unnamed individuals preparing to file the instant action. The letter identifies the three
4 Plaintiffs, and claims they require assistance consolidating or relocating their belongings. No
5 other accommodations were requested. A true and correct copy of the November 15, 2024 letter
6 signed by Yesica Prado and Gordon Gilmore is attached hereto as Exhibit G.

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8 23. The City has limited time and resources to dedicate to encampment closures. As
9 the lead on these closures, I and my direct reports personally coordinate the various City staff
10 and equipment that are required. Whenever the court halts the City's operations it creates a
11 domino effect slowing down effective operations throughout the City.

12 24. For example, a court in this District issued a temporary restraining order (TRO)
13 barring the City from addressing serious health and safety issues at an encampment in the case of
14 *Prado, et al. v. City of Berkeley*, Case No. 3:23-cv-04537-EMC, on September 5, 2023, only to
15 dissolve the TRO on September 27, 2023. Immediately after the TRO was issued in that matter,
16 conditions at the Harrison Street encampment deteriorated significantly. Between two and six
17 additional people moved into the area of Harrison Street between 7th and 8th Streets, and the
18 amount of trash and debris roughly doubled, and combined with the ever-growing accumulation
19 of personal belongings, the items were encroaching on the roadway, leaving only one lane of
20 traffic for all vehicles. Upon information and belief, unhoused people moved onto Harrison
21 Street as a direct result of the court forbidding the City from keeping the area safe and clean.

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23 25. However, because of the real constraints on the City's resources, the City was
24 unable to return to address the serious safety issues in the area until November 7, 2023, leaving
25 both the residents of that encampment and the neighboring community at risk. This is
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