

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION TWO

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

vs.

CHRISTIAN NOEL PADILLA-MARTEL,

Defendant and Respondent.

Case No. A162872

San Francisco Superior Court
No. CGC-20-586763

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

vs.

VICTOR ZELAYA,

Defendant and Respondent.

Case No. A162873

San Francisco Superior Court
No. CGC-20-586761

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

vs.

JAROLD SANCHEZ,

Defendant and Respondent.

Case No. A162874

San Francisco Superior Court
No. CGC-20-586753

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

vs.

GUADALOUPE AGUILAR-BENEGAS,

Defendant and Respondent.

Case No. A162875

San Francisco Superior Court
No. CGC-20-586732

**APPELLANT PEOPLE OF THE STATE
OF CALIFORNIA'S MOTION FOR
JUDICIAL NOTICE; EXHIBITS A—B**

The Honorable Ethan P. Schulman

DAVID CHIU, State Bar #189542
City Attorney
PETER J. KEITH, State Bar #206482
Chief Attorney, Neighborhood and
Resident Safety Division
MEREDITH B. OSBORN, State Bar #250467
Chief Trial Deputy
HOLLY D. COULEHAN, State Bar #244682
Deputy City Attorney
1390 Market Street, 7th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3800
Facsimile: (415) 437-4644

Attorneys for Plaintiff and Appellant
PEOPLE OF THE STATE OF
CALIFORNIA

MOTION FOR JUDICIAL NOTICE

Pursuant to Rule 8.252 of the California Rules of Court, Appellant People of the State of California (“People”) hereby move the Court to take judicial notice of certain official acts, specifically the December 2021 declaration of a state of emergency in the Tenderloin District, and factual matters not subject to reasonable dispute, namely that the nuisance in the Tenderloin continues to persist unabated:

1. The Proclamation by the Mayor Declaring the Existence of a Local Emergency: Drug Overdoses in the Tenderloin by London N. Breed, Mayor of the City and County of San Francisco, dated December 17, 2021, a true and correct copy of which is attached as Exhibit A.

2. Motion Concurring in Proclamation of Local Emergency - Drug Overdoses in the Tenderloin, dated December 23, 2021, a true and correct copy of which is attached as Exhibit B.

3. That the nuisance in the Tenderloin found by the trial court is still ongoing.

DISCUSSION

The recent emergency declarations and the continuing crisis in the Tenderloin are relevant to this appeal, in that they provide further proof of the urgent need for this Court to correct the error of the Superior Court, and to reverse and remand with instructions to the Superior Court to issue the requested preliminary injunctions against Respondents, as more fully described in the People’s merits briefs.

The official declaration of a state of emergency and concurrence by a county board of supervisors is a proper subject of judicial notice. (Evid. Code § 452(b), (c); e.g., *Bullock v. Superior Court of Contra Costa County*

(2020) 51 Cal.App.5th 134, 141 fns. 4 & 5 [taking judicial notice of declaration of COVID-19 emergency by county board of supervisors]; see also, e.g., *Inns by the Sea v. California Mutual Insurance Company* (2021) 71 Cal.App.5th 688, 286 Cal.Rptr.3d 576, 580 fn. 2 [taking judicial notice of county orders during COVID-19 emergency, and noting subdivision (c) provides for judicial notice of actions of counties].)

The continued existence of the nuisance conditions and drug crisis in the Tenderloin as found by the trial court is a proper subject of judicial notice per Evidence Code section 452, subdivision (g), which provides for judicial notice of “facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.” (Evid. Code § 452(g); e.g., *Porter v. Fiske* (1946) 74 Cal.App.2d 332, 338 [upholding injunction against violator of pricing controls, and taking judicial notice of “emergency occasioned by the scarcity of housing accommodations in areas where war supplies were being produced” during World War II].) The existing nuisance conditions in the Tenderloin are well known within the territorial jurisdiction of the Superior Court and this Court. Respondents and Amici have not disputed them, and no one could reasonably dispute that they continue to exist.

//

//

These matters were not presented to the trial court because they occurred after the trial court issued its order; furthermore, these matters simply confirm that continued existence of the nuisance conditions in the Tenderloin, as already found by the trial court when it issued the order appealed from.

Dated: January 3, 2022

DAVID CHIU
City Attorney
PETER J. KEITH
Chief Attorney,
Neighborhood and Resident
Safety Division

By: /s/ Peter J. Keith
PETER J. KEITH

Attorneys for Appellant
PEOPLE OF THE STATE OF
CALIFORNIA

PROOF OF SERVICE

I, MORRIS ALLEN, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney’s Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On January 3, 2022, I served the following document(s):

**APPELLANT PEOPLE OF THE STATE OF CALIFORNIA’S
MOTION FOR JUDICIAL NOTICE; EXHIBITS A—B;
[PROPOSED] ORDER GRANTING MOTION FOR JUDICIAL
NOTICE**

on the following persons at the locations specified:

Edward W. Swanson, Esq.
Carly Bittman, Esq.
Swanson & McNamara LLP
300 Montgomery Street, Suite 1100
San Francisco, CA 94101
Tel: 415-477-3800
Fax: 415-477-9010
ed@smlp.law
Carly@smlp.law
Via TrueFiling

David F. Gross, Esq.
Robert Nolan, Esq.
Mandy Chan, Esq.
Katherine Thoreson, Esq.
DLA Piper LLC (US)
555 Mission Street, Suite 2400
San Francisco, CA 94105-2933
Tel: 415-836-2500
Fax: 415-836-2501
david.gross@dlapiper.com
robert.nolan@dlapiper.com
mandy.chan@dlapiper.com
katherine.thoreson@dlapiper.com
Via TrueFiling

Chessie Thacher, Esq.
American Civil Liberties Union
Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111
Tel: 415-621-2493
Fax: 415-255-8437
cthacher@aclunc.org
Via TrueFiling

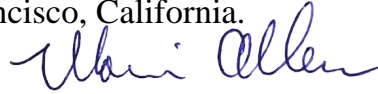
in the manner indicated below:

///
///
///
///

BY ELECTRONIC MAIL: Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be served electronically through **TrueFiling** in portable document format (“PDF”) Adobe Acrobat [include Transaction No. if POS filed separately].

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

Executed January 3, 2022, at San Francisco, California.



MORRIS ALLEN

Document received by the CA 1st District Court of Appeal.

EXHIBIT A



**PROCLAMATION BY THE MAYOR DECLARING
THE EXISTENCE OF A LOCAL EMERGENCY**

Drug Overdoses in the Tenderloin

WHEREAS, California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14), and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property or welfare of the City and County of San Francisco (the “City”) or its citizens; and

WHEREAS, Deaths from drug overdose are at epidemic levels in San Francisco. While the problem has gotten worse over the past few years and particularly over the course of the pandemic, recently the threat to public health, safety and welfare has become much graver and more imminent in the Tenderloin (as defined below) and demands emergency action; and

WHEREAS, Deaths attributable to drug overdose in San Francisco have increased over 200% since 2018. In 2020, over 700 individuals died from drug overdoses. The number of deaths in 2020 from drug overdose far exceeded the number of individuals who died of COVID-19; and

WHEREAS, The COVID-19 pandemic exacerbated the overdose epidemic in San Francisco. In the eight months before the Health Officer issued the Shelter-In-Place Order (March 2020), the median number of weekly overdose deaths was 10, which increased to 15 after the Order, representing a 50% increase. During this period, there was a significant increase in the number of people experiencing homelessness dying from drug overdoses; and

WHEREAS, A main contributor to the rapid rise in drug overdoses and deaths in San Francisco is the recent increase in the prevalence of fentanyl in the illegal drug market. Fentanyl is highly addictive and potent, and it is more likely to lead to overdose than other drugs in common use today. There has been a significant increase in the deaths attributable to fentanyl since the onset of the COVID-19 pandemic. Fentanyl was a factor in more than 70% of overdose deaths between January and October 2021, an increase of nearly 20% since 2019. Over the past year, the San Francisco Police



Department has confiscated over 23 kilos of fentanyl – more than four times the year before; and

WHEREAS, As the situation with the COVID-19 pandemic has begun to improve, the drug overdose crisis in the City has continued unabated. Between January and November 2021, nearly 600 San Franciscans died of a drug overdose; and

WHEREAS, The Tenderloin neighborhood and the surrounding area, including the South of Market neighborhood, are the epicenter of the overdose crisis in the City. Between January and October 2021, 21% of overdose deaths occurred in the Tenderloin, with an additional 20% of deaths occurring in the South of Market neighborhood. These areas make up only 7% of the City’s population; and

WHEREAS, Contacts between clients and the City’s non-profit partners running needle exchange programs in the Tenderloin increased nearly 30% in the period between July and September 2021 compared to the previous three months; and

WHEREAS, The crisis in the Tenderloin has worsened in recent months. One of the City’s non-profit partners reported an over 35% increase in the distribution of Narcan in the Tenderloin between October 2021 and November 2021. Narcan is used to revive someone experiencing an overdose; and

WHEREAS, Emergency medical calls for service designated as calls for a “sick person” in the Tenderloin have increased more than 150% between June and November 2021 compared to the same period in 2020, and medical calls for service for all reasons during this time period also increased, indicative of serious public health issues likely attributable to the opioid crisis in the area; and

WHEREAS, Other indicators of the opioid crisis in the Tenderloin are also present; street conditions in the Tenderloin and surrounding area have deteriorated in recent months. Calls to 311 concerning human waste, needles, and garbage on streets and sidewalks increased significantly between the fall of 2020 and the fall of 2021; and

WHEREAS, There was a 38% increase in calls to the City’s Street Overdose Response Team between October and November 2021, and a 44% increase in calls regarding drug overdoses in the same period; and



WHEREAS, The rapidly deteriorating conditions in the Tenderloin caused by the opioid crisis put the lives of San Franciscans at serious risk, and the City must take action beyond the City’s ordinary response capabilities, including re-appropriating resources to address the crisis, directing personnel from City departments to assist with the response, implementing crisis response sites for individuals to obtain medical help and services, and quickly procuring goods and services to address the crisis; and

WHEREAS, Conditions of extreme peril to the safety of persons and property have arisen; and

WHEREAS, The Mayor proclaims that all of these conditions of extreme peril warrant and necessitate the proclamation of the existence of a local emergency,

NOW, THEREFORE,

I, London N. Breed, Mayor of the City and County of San Francisco, proclaim the existence, effective immediately on December 17, 2021 and for limited duration specified below, of an emergency within the City threatening the lives, property or welfare of the City and County and its citizens.

It is further ordered that:

- (1) All City officers and employees take all steps requested by the Executive Director of the Department of Emergency Management to address the emergency conditions of the overdose and overdose death crisis in the Tenderloin. For purposes of this Proclamation, the “Tenderloin” means the San Francisco Police Department’s Tenderloin District and the additional area within a one-block perimeter of that District.
- (2) All City officers and employees take all steps requested by the Executive Director of the Department of Emergency Management to qualify the City for reimbursement from the Federal Emergency Management Agency and for other state and federal relief as may be available to reimburse the City for the expenses it incurs in addressing this emergency.
- (3) Notwithstanding any other restriction in local law except Charter Section 9.118, City departments entering agreements related to the City’s response to the emergency, including contracts for the procurement of commodities or services, contracts for public works, and grant agreements, shall comply with the procedural requirements of Section 21.15 of the Administrative Code (for agreements that are otherwise subject to



Chapter 21 or Chapter 21G) or Section 6.60 of the Administrative Code (for agreements that are otherwise subject to Chapter 6). Civil Service Commission approval of such agreements is waived. Within 30 days of execution of the agreement departments must report any agreement that would have required approval by the Civil Service Commission to the Civil Service Commission.

(4) Temporary facilities implemented for purposes of offering services as part of the emergency response, such as public health, behavioral health, social, or housing services, as recommended by the Director of the Department of Emergency Management or the Director's designee and authorized by the Mayor or the Mayor's designee, shall be allowed in the Tenderloin, including on any City sidewalks or parks; any provision in City law that limits or restricts the City's deployment of such facilities is waived, and any applicable local requirements for public notice, the filing or approval of a permit application, or payment of fees related to that response are waived.

I further proclaim and order that:

By the terms of this emergency declaration the City's government is organized under the provisions of the Incident Command System (ICS), which system forms an essential part of the City's Emergency Response Plan and is located in the Emergency Operations Center of the City and County of San Francisco. All City departments are ordered to cooperate strictly with the requests for material and personnel resources that may emanate from the ICS staff of the City. Under Charter Section 3.100(14), the Mayor may direct department personnel and resources, including reallocating and expending available funds within a department's budget or among and between departments, and expending available unappropriated funds, as necessary to meet the emergency. At least once every 30 days during this emergency, and again within 30 days after the termination of the emergency, the Controller shall report to the Board of Supervisors any transfer of appropriated or unappropriated funds adopted pursuant to this proclamation;



And I further proclaim and order that:

This declaration of a local emergency shall continue to exist for no longer than 90 days from the effective date of this Proclamation and may be terminated earlier by the Mayor or the Board of Supervisors.

DATED: December 17, 2021

A handwritten signature in blue ink that reads "London Breed".

London N. Breed
Mayor of San Francisco

EXHIBIT B

1 [Concurring in Proclamation of Local Emergency - Drug Overdoses in the Tenderloin]

2
3 **Motion concurring in the December 17, 2021, Proclamation by the Mayor Declaring the**
4 **Existence of a Local Emergency in connection with the sudden increase in drug**
5 **overdoses in the Tenderloin, and concurring in actions taken to meet the emergency**
6 **to: 1) require City employees and officers to take all steps requested by the Executive**
7 **Director of the Department of Emergency Management (“DEM”) to address the**
8 **emergency conditions; 2) require all City employees and officers to take all steps**
9 **requested by the Executive Director of DEM to qualify the City for funding as may be**
10 **available to reimburse the City for the expenses it incurs in addressing this emergency;**
11 **3) allow departments to procure services, goods, and public works relating to the**
12 **emergency using emergency procurement procedures, and waive any applicable**
13 **requirement of Civil Service Commission approval of such contracts; and 4) allow the**
14 **implementation in the Tenderloin of temporary facilities for purposes of offering**
15 **services as part of the emergency response, and waive any provision in City law that**
16 **limits or restricts the City’s deployment of such facilities, and any applicable local**
17 **requirements for public notice, the filing or approval of a permit application, or**
18 **payment of fees related to that response.**

19
20 WHEREAS, On December 17, 2021, Mayor London N. Breed declared a local
21 emergency to exist in connection with the sudden increase of drug overdoses in the
22 Tenderloin; and

23 WHEREAS, The Mayor has transmitted a copy of that Proclamation Declaring the
24 Existence of a Local Emergency (“Proclamation”) to the Board of Supervisors, and such copy
25 is on file with the Clerk of the Board of Supervisors in File No. 211320; and

1 WHEREAS, Government Code, Sections 8550 et seq. and Charter, Section 3.100
2 provide for the concurrence by members of the Board of Supervisors in such emergency
3 declaration and in actions taken by the Mayor to meet the emergency; and

4 WHEREAS, Deaths from drug overdose are at epidemic levels in San Francisco; while
5 the problem has gotten worse over the past few years and particularly over the course of the
6 pandemic, recently the threat to public health, safety and welfare has become much graver
7 and more imminent in the Tenderloin and demands emergency action; and

8 WHEREAS, Deaths attributable to drug overdose in San Francisco have increased
9 over 200% since 2018, and in 2020, over 700 individuals died from drug overdoses; the
10 number of deaths in 2020 from drug overdose far exceeded the number of individuals who
11 died of COVID-19; and

12 WHEREAS, The COVID-19 pandemic exacerbated the overdose epidemic in San
13 Francisco; in the eight months before the Health Officer issued the Shelter-In-Place Order
14 (March 2020), the median number of weekly overdose deaths was 10, which increased to 15
15 after the Order, representing a 50% increase; and

16 WHEREAS, A main contributor to the rapid rise in drug overdoses and deaths in San
17 Francisco is the recent increase in the prevalence of fentanyl in the illegal drug market; there
18 has been a significant increase in the deaths attributable to fentanyl since the onset of the
19 COVID-19 pandemic, with fentanyl serving as a factor in more than 70% of overdose deaths
20 between January and October 2021, an increase of nearly 20% since 2019.

21 WHEREAS, As the situation with the COVID-19 pandemic has begun to improve, the
22 drug overdose crisis in the City has continued unabated; between January and November
23 2021, nearly 600 San Franciscans died of a drug overdose; and

24
25

Document received by the CA 1st District Court of Appeal.

1 WHEREAS, Between January and October 2021, 21% of overdose deaths occurred in
2 the Tenderloin, with an additional 20% of deaths occurring in the South of Market
3 neighborhood; and

4 WHEREAS, Contacts between clients and the City’s non-profit partners running needle
5 exchange programs in the Tenderloin increased nearly 30% in the period between July and
6 September 2021 compared to the previous three months; and

7 WHEREAS, The crisis in the Tenderloin has worsened in recent months; one of the
8 City’s non-profit partners reported an over 35% increase in the distribution of Narcan (which is
9 used to revive someone experiencing an overdose) in the Tenderloin between October 2021
10 and November 2021; and

11 WHEREAS, Emergency medical calls for service designated as calls for a “sick person”
12 in the Tenderloin have increased more than 150% between June and November 2021
13 compared to the same period in 2020, and medical calls for service for all reasons during this
14 time period also increased, indicative of serious public health issues likely attributable to the
15 opioid crisis in the area; and

16 WHEREAS, Other indicators of the opioid crisis in the Tenderloin are also present;
17 street conditions in the Tenderloin and surrounding area have deteriorated in recent months,
18 and calls to 311 concerning human waste, needles, and garbage on streets and sidewalks
19 increased significantly between the fall of 2020 and the fall of 2021; and

20 WHEREAS, There was a 38% increase in calls to the City’s Street Overdose Response
21 Team between October and November 2021, and a 44% increase in calls regarding drug
22 overdoses in the same period; and

23 WHEREAS, The rapidly deteriorating conditions in the Tenderloin caused by the opioid
24 crisis put the lives of San Franciscans at serious risk, and the City must take action beyond
25 the City’s ordinary response capabilities, including re-appropriating resources to address the

1 crisis and directing personnel from City departments to assist with the response, which the
2 Proclamation authorizes the Mayor to do under Charter, Section 3.100(14); and

3 WHEREAS, The Mayor has found the aforesaid conditions of extreme peril justify and
4 require a proclamation of the existence of a local emergency; and

5 WHEREAS, As part of the Proclamation, the Mayor took additional steps to meet the
6 emergency by ordering four actions to meet the emergency; and

7 WHEREAS, For purposes of the Proclamation, the Tenderloin is defined as the San
8 Francisco Police Department's Tenderloin District and the additional area within a one-block
9 perimeter of that District; now, therefore, be it

10 MOVED, That the Board of Supervisors concurs with the Proclamation by the Mayor
11 Declaring the Existence of Local Emergency issued on December 17, 2021, and, be it

12 FURTHER MOVED, That the Board of Supervisors concurs with the following actions
13 taken by the Mayor to meet the local emergency, as such actions are described in full in
14 December 17, 2021 Proclamation and summarized as follows:

15 **Action 1:** Requiring all City officers and employees to take all steps
16 requested by the Executive Director of the Department of Emergency Management ("DEM") to
17 address the emergency conditions of the overdose and overdose death crisis in the
18 Tenderloin;

19 **Action 2:** Requiring all City officers and employees to take all steps
20 requested by the Executive Director of DEM to qualify the City for reimbursement from the
21 Federal Emergency Management Agency and for other state and federal relief as may be
22 available to reimburse the City for the expenses it incurs in addressing this emergency;

23 **Action 3:** Allowing departments to procure services, goods, and public works
24 relating to the emergency using emergency procurement procedures, waiving any applicable
25 requirement of Civil Service Commission approval of such contracts, and requiring

1 departments to report to the Civil Service Commission any agreement that would have
2 required its approval;

3 **Action 4:** Allowing the implementation in the Tenderloin, including on any
4 City sidewalks or parks, of temporary facilities for purposes of offering services as part of the
5 emergency response, such as public health, behavioral health, social, or housing services, as
6 recommended by the Director of DEM or the Director’s designee and authorized by the Mayor
7 or the Mayor’s designee, and waiving any provision in City law that limits or restricts the City’s
8 deployment of such facilities, and any applicable local requirements for public notice, the filing
9 or approval of a permit application, or payment of fees related to that response.

10
11 n:\govern\as2021\9690021\01572328.docx

Document received by the CA 1st District Court of Appeal.



City and County of San Francisco

Tails

Motion: M21-183

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 211320

Date Passed: December 23, 2021

Motion concurring in the December 17, 2021, Proclamation by the Mayor Declaring the Existence of a Local Emergency in connection with the sudden increase in drug overdoses in the Tenderloin, and concurring in actions taken to meet the emergency to: 1) require City employees and officers to take all steps requested by the Executive Director of the Department of Emergency Management (“DEM”) to address the emergency conditions; 2) require all City employees and officers to take all steps requested by the Executive Director of DEM to qualify the City for funding as may be available to reimburse the City for the expenses it incurs in addressing this emergency; 3) allow departments to procure services, goods, and public works relating to the emergency using emergency procurement procedures, and waive any applicable requirement of Civil Service Commission approval of such contracts; and 4) allow the implementation in the Tenderloin of temporary facilities for purposes of offering services as part of the emergency response, and waive any provision in City law that limits or restricts the City’s deployment of such facilities, and any applicable local requirements for public notice, the filing or approval of a permit application, or payment of fees related to that response.

December 23, 2021 Board of Supervisors - APPROVED

Ayes: 8 - Chan, Haney, Mandelman, Mar, Melgar, Ronen, Safai and Stefani

Noes: 2 - Preston and Walton

Excused: 1 - Peskin

File No. 211320

I hereby certify that the foregoing Motion was APPROVED on 12/23/2021 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Document received by the CA 1st District Court of Appeal.