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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL KNIGHT,
Plaintiff,
v.
RICHARDSON BAY REGIONAL
AGENCY, et al.,
Defendants.

Case No. [3:22-cv-06347-WHO](#)

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER**

Re: Dkt. No. 3

United States District Court
Northern District of California

Daniel Knight seeks a temporary restraining order to preserve the status quo and prevent the Richardson Bay Regional Authority (“RBRA”), the RBRA Harbormaster Jim Malcom, and the RBRA Executive Director Steven McGrath from seizing his boat, the *Coronado*, and its anchor system. The parties have two fundamental and substantial disagreements: whether Knight’s boat constitutes “marine debris” under the relevant regulation, and whether Knight lives on the boat. These questions and the evidence provided raise serious questions going to the merits of Knight’s substantive due process claim under the Fourteenth Amendment, his unreasonable seizure claim under the Fourth Amendment, and his Takings Clause claim under the Fifth Amendment. Additionally, the loss of the boat would be a significant hardship to Knight, particularly if his claim that he lives there is correct. For those reasons, and as explained in detail below, Knight’s motion for a temporary restraining order is GRANTED.

Knight shall file an expanded Motion for a Preliminary Injunction by November 23, 2022. The defendants shall file any opposition by December 12, 2022, and Knight may file any reply by December 19, 2022. The hearing will be held on January 4, 2023, at 2:00 p.m. via Zoom videoconference. The parties shall conduct expedited discovery and exchange initial disclosures of the documents each side relies on to prove their claims and defenses, and a list of witnesses, by

1 November 3, 2022.

2 Knight's motion to proceed in forma pauperis is GRANTED. *See* Dkt. No. 2. The
 3 complaint meets the requirements of 28 U.S.C. § 1915. Regarding service, defendants RBRA,
 4 Malcolm, and McGrath appeared in opposition to this motion and have been adequately apprised
 5 of the case. The Clerk shall issue a summons and the U.S. Marshall shall serve process on these
 6 three defendants without prepayment. *See* 28 U.S.C. § 1915. The status of the complaint as to the
 7 other named defendants is currently unclear and further service will be addressed in future filings.

8 Knight asks for the appointment of counsel. I will not do so at this time and advise him to
 9 seek assistance from the Court's "Legal Help Center" for unrepresented parties. There is a link on
 10 the court's homepage at www.cand.uscourts.gov titled "If You Don't Have a Lawyer" that
 11 provides additional information. In San Francisco, the Legal Help Center is located on the 15th
 12 Floor, Room 2796, of the courthouse at 450 Golden Gate Avenue. To make an appointment, call
 13 415-782-8982.

14 Finally, both parties agree that an early mediation might be beneficial. They are referred to
 15 the court's Alternative Dispute Resolution unit for mediation, to be completed by mid-December
 16 if possible.

17 **BACKGROUND**

18 On October 21, 2022, Knight filed a motion for a temporary restraining order, seeking to
 19 restrain the defendants from seizing his boat and anchor system. Motion for Temporary
 20 Restraining Order ("Mot.") [Dkt. No. 3]. That same day, I issued an order preserving the status
 21 quo until the parties could be heard, and I ordered the defendants to refrain from seizing the boat
 22 and anchor system. [Dkt. No. 7]. I permitted the defendants to file a response to the motion by
 23 October 25, 2022, which they did. *See* Opposition to Motion for Temporary Restraining Order
 24 ("Oppo.") [Dkt. No. 10]. I held a hearing on October 27, 2022, at which Knight and counsel for
 25 the RBRA appeared.

26 Knight asserts that he is a member of the "anchor-out"¹ community in Richardson Bay, off
 27

28 ¹ Part of Knight's claim seems to arise from his assertion that the RBRA does not have authority to regulate the anchor-out community because of certain federal regulations. *See* Compl. ¶ 15,

1 the coast of Marin County, California, and that he lives there on his boat, the *Coronado*. Mot.
2 ¶¶ 1, 3, 15, 38; Mot. Ex. A Declaration of Daniel Knight (“Knight Decl.”) ¶ 2. Knight says that he
3 has lived there for twenty-five years, that the *Coronado* is sea-worthy and sails often, and that he
4 has nowhere else to live because he has a fixed income, certain physical ailments, and little credit
5 or rental history. Mot. ¶¶ 1, 2, 3; Knight Decl. ¶¶ 2, 6-11. He filed this action because, according
6 to Knight, the RBRA is attempting to seize and dispose of his boat without authority, in violation
7 of his constitutional rights. Mot. ¶¶ 2, 4, 7, 8, 17-22, 31; Knight Decl. ¶ 14.

8 The RBRA is alleged to be a local government agency run and regulated under a joint
9 service agreement between the County of Marin and the cities of Mill Valley, Tiburon, and
10 Belvedere. Mot. ¶ 16.

11 The RBRA posted a notice on the boat on October 14, 2022, notifying Knight that the
12 *Coronado* would be “removed and disposed of” by the RBRA within ten days. Mot. Ex. B. The
13 notice asserted that the boat was “Marine Debris” under California Harbors and Navigation Code
14 (“CHNC”) sections 550 and 551, which in part defines marine debris as a vessel that is
15 “unseaworthy and not reasonably fit or capable of being made fit to be used as a means of
16 transportation by water.” *Id.*

17 Knight asserts that the boat is not marine debris because it sails and has a functional
18 engine, and he includes three declarations supporting that assertion. *See* Knight Decl.; Mot. Ex. B
19 Declaration of Joseph Bernstein (“Bernstein Decl.”); Ex. C Declaration of Aaron Kelly (“Kelly
20 Decl.”). He says that he has not sailed it recently because the RBRA seized his anchor system.
21 Knight Decl. ¶¶ 4, 15-18. The RBRA disagrees and included a declaration from Harbormaster
22 Malcolm that says he has only seen the boat move once since January 2021. *Oppo*. Declaration of
23 Jim Malcolm (“Malcolm Decl.”) ¶¶ 4-5. The RBRA points out that the boat has “an extreme
24 amount of debris on it, particularly in the cockpit.” Malcolm Decl. ¶ 3. The photos of the vessel
25 submitted by the RBRA do not clearly depict extreme debris. *See* *Oppo*. Ex. D.

26
27 131. While 33 C.F.R. § 110.126a defines Richardson Bay as a “Special Anchorage Area,” it is
28 unclear from the text of the regulation how it affects the RBRA’s authority over the boats in the
Richardson Bay anchor-out community.

1 Knight also argues that he lives on the boat and any effort to dispose of the ship will render
2 him homeless. Knight Decl. ¶¶ 5-11; Mot. ¶¶ 3-4. Again, the RBRA disagrees and says that the
3 boat has been uninhabited since at least October 2021. Malcolm Decl. ¶ 8; *see also* Oppo. Ex. E
4 (email exchange between Malcolm and Knight where Malcolm states, “On July 6, 2022, you
5 admitted to me that you no longer lived on the vessel.”).

6 Malcolm also asserts that Knight wanted to participate in the RBRA “buy-back program,”
7 which permits owners to surrender boats to the RBRA in exchange for cash. Malcolm Decl.
8 ¶¶ 10-12. Malcolm included screenshots of what appear to be a text message conversation in
9 which Knight says he wants to participate in the program. Oppo. Ex. B. Malcolm says that he
10 also gave Knight the option of moving his boat out of the Bay. Oppo. 5:1-5; Malcolm Decl. ¶ 10.
11 It was only when Knight withdrew his participation that the RBRA moved forward with seizing
12 the boat. Malcolm Decl. ¶¶ 14-15. Knight counters that he only entertained the idea of the
13 program because he was being extorted by Malcolm and because Malcolm “fraudulently” asserted
14 that his boat is marine debris. *See* Mot. ¶¶ 1, 3, 8; Mot. Ex. A (Cease and Desist Letter).

15 Finally, Knight seems to assert in the complaint that the effort to dispose of his boat is part
16 of an elaborate conspiracy. According to Knight, the Bay Conservation and Development
17 Commission (“BCDC”) was chastised by the State of California for failing to address
18 environmental issues in the San Francisco Bay, so the BCDC and RBRA (along with many other
19 defendants) worked together to come up with a scheme to appease the State and also receive
20 additional funding from state and federal environmental protection agencies in the process. *Id.*
21 ¶¶ 47-54. Apparently the RBRA found an unlicensed surveyor to conduct fraudulent surveys and
22 determine that certain vessels constituted marine debris so that the RBRA could remove those
23 vessels and show the various funding agencies and the State that it was taking action against
24 environmental polluters. *Id.* ¶¶ 9, 40-46, 54.

25 The RBRA in turn says it entered into an agreement with the BCDC “to remove illegal
26 anchor-outs in Richardson Bay” and that its effort to remove marine debris are in furtherance of
27 environmental preservation and safety goals. Oppo. 7:11-21.

28

1 Knight asserts nine causes of action, which construed liberally² present claims under 42
 2 U.S.C. § 1983, 42 U.S.C. § 1985, and *Monell* for (1) violation of the Fourth Amendment’s
 3 prohibition on unreasonable searches and seizures (Causes of Action 1 and 2); (2) violation of the
 4 Fourteenth Amendment’s Due Process Clause for deprivation of property (Causes of Action 1 and
 5 2); (3) violation of the Fourteenth Amendment’s Due Process Clause under the state-created
 6 danger doctrine (Causes of Action 1 and 2); (4) violation of the Fifth Amendment’s Takings
 7 Clause (Causes of Action 3 and 5); (5) violation of the California Constitution’s Due Process
 8 Clause for deprivation of property (Cause of Action 4); as well as (6) mail and wire fraud and
 9 conspiracy (Causes of Action 2 and 7); (7) extortion (Cause of Action 2); (8) conspiracy to
 10 commit hijacking (Cause of Action 6); and (9) violation of the Administrative Procedures Act
 11 (Cause of Action 8).³ Knight appears to seek both damages and a permanent injunction to prohibit
 12

13
 14 ² “A document filed *pro se* is ‘to be liberally construed,’ and ‘a *pro se* complaint, however
 15 inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by
 16 lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97,
 106 (1976)).

17 ³ The Causes of Action are outlined in the complaint as:

- 18 • Cause of Action 1: “Substantive Due Process Claim against State Created Danger and
 19 Property Seizure” under 42 U.S.C. § 1983, the Fourth Amendment, the Fourteenth
 20 Amendment. [Compl. at pdf p. 17]
- 21 • Cause of Action 2: “Violation of Right to be Secure from Unreasonable Seizures,
 22 Substantive Due Process State Created Danger, Wire Fraud, Conspiracy to Commit Wire
 23 Fraud, and Extortion” under § 1983, the Fourth Amendment, the Fourteenth Amendment,
 24 18 U.S.C. § 1961 (Wire Fraud). [Compl. at pdf 19-23]
- 25 • Cause of Action 3: “Violation of the Takings Clause” under § 1983, the Fifth Amendment.
 26 [Compl. pdf 23-28]
- 27 • Cause of Action 4: “Violation of Right to Due Process of Law” under California
 28 Constitution Article 1 § 7(a)(5). [Compl. at pdf 28]
- Cause of Action 5 (also labeled “Second Cause of Action”) – Fifth Amendment Takings
 and 42 U.S.C. §§ 1983, 1985. [Compl. at pdf 28-30]
- Cause of Action 6: “conspiracy to commit hijacking” under no stated law. [Compl. at pdf
 30-31]
- Cause of Action 7: “Mail and Wire Fraud” under 18 U.S.C. § 1961. [Compl. at 31-35]
- Cause of Action 8: Violation of Administrative Procedures Act (not against the present
 defendants). [Compl. at pdf 35-39]
- Cause of Action 9: “Conspiracy to Deprive of Civil Rights” under 42 U.S.C. § 1985,
Monell. [Compl. at pdf 39-40]

1 the defendants from seizing his boat going forward. *See* Complaint (“Compl.”) [Dkt. No. 1] at pdf
2 40-41. The claims are also filed against many other defendants who are not involved in the
3 present motion.

4 LEGAL STANDARD

5 Federal Rule of Civil Procedure 65 governs preliminary injunctions and temporary
6 restraining orders. To obtain a preliminary injunction, the plaintiff has the burden to “establish [1]
7 that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the
8 absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an
9 injunction is in the public interest.” *Porretti v. Dzurenda*, 11 F.4th 1037, 1047 (9th Cir. 2021)
10 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “Where, as here, the
11 government opposes a preliminary injunction, the third and fourth factors merge into one inquiry.”
12 *Id.* (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)).

13 “Injunctive relief [is] an extraordinary remedy that may only be awarded upon a clear
14 showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22. Courts in this Circuit
15 “appl[y] a ‘sliding scale’ approach to preliminary injunctions such that a preliminary injunction
16 can issue ‘where the likelihood of success is such that “serious questions going to the merits were
17 raised and the balance of hardships tips sharply in [plaintiff’s] favor.”” *Doe v. San Diego Unified*
18 *Sch. Dist.*, 19 F.4th 1173, 1177 (9th Cir. 2021), *reconsideration en banc denied*, 22 F.4th 1099
19 (9th Cir. 2022) (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).

20 Temporary restraining orders are governed by the same standard applicable to preliminary
21 injunctions. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, n. 7 (9th Cir.
22 2001). A temporary restraining order “should be restricted to serving [its] underlying purpose of
23 preserving the status quo and preventing irreparable harm just so long as is necessary to hold a
24 hearing, and no longer.” *See Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck*
25 *Drivers Local No. 70*, 415 U.S. 423, 439 (1974). A motion for temporary restraining order must
26 include “specific facts in an affidavit or a verified complaint [that] clearly show that immediate
27 and irreparable injury, loss, or damage will result to the movant before the adverse party can be
28 heard in opposition,” as well as written certification from the movant’s attorney stating “any

1 efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b).

2 DISCUSSION

3 I. Temporary Restraining Order

4 For the reasons that follow, I conclude that—at this preliminary stage of litigation—Knight
 5 has shown “serious questions going to the merits,” *Doe*, 19 F.4th at 1177, of his substantive due
 6 process claim under the Fourteenth Amendment, his unreasonable seizure claim under the Fourth
 7 Amendment, and his Takings Clause claim under the Fifth Amendment. At this point “the balance
 8 of hardships tips sharply in Knight’s favor,” *id.*, and so a temporary restraining order is
 9 appropriate.

10 A. Serious Questions Going to the Merits

11 i. Fourteenth Amendment Substantive Due Process

12 “Substantive due process ‘forbids the government from depriving a person of life, liberty,
 13 or property in such a way that “shocks the conscience” or “interferes with the rights implicit in the
 14 concept of ordered liberty.’” *Corales v. Bennett*, 567 F.3d 554, 568 (9th Cir. 2009) (quoting
 15 *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 (9th Cir. 1998)); *see also Brittain v. Hansen*, 451
 16 F.3d 982, 990-91 (9th Cir. 2006). “Substantive due process is ordinarily reserved for those rights
 17 that are ‘fundamental.’” *Id.* at 990 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721-22
 18 (1997)).

19 The complaint alleges that RBRA is acting outside the scope of its authority to seize
 20 Knight’s vessel. While the RBRA says it may seize the vessel as marine debris under CHNC
 21 sections 550 and 551,⁴ Knight counters that the vessel does not meet the regulatory definition and
 22 therefore cannot be seized. Indeed, Knight says that the RBRA created a fraudulent report

24 ⁴ CHNC section 550 defines “Marine debris” as “a vessel or part of a vessel, including a derelict,
 25 wreck, hulk, or part of any ship or watercraft or dilapidated vessel, that is unseaworthy and not
 26 reasonably fit or capable of being made fit to be used as a means of transportation by water.” Cal.
 Harbor & Navigation Code § 550.

27 Section 551(a)(1) provides, “marine debris that is floating, sunk, partially sunk, or beached in or
 28 on a public waterway, public beach, or on state tidelands or submerged lands may be removed or
 destroyed, or otherwise disposed of, by any state, county, city, or other public agency having
 jurisdiction over its location of having authority to remove marine debris or solid waste.” *Id.*
 § 551(a)(1). The object must “meet[] the definition of marine debris” from section 550(b) and
 “ha[ve] no value or a value that does not exceed the cost of removal and disposal.” *Id.*

1 determining the boat constituted marine debris so that the agency could seize the boat, show the
2 state and federal funding agents its enforcement action, and receive additional money from the
3 state and federal governments. At this point, it is not clear if this theory is plausible. But if the
4 RBRA is acting outside its delegated authority to seize a vessel that does *not* qualify as marine
5 debris, it is plausible that Knight could show that conduct “shocks the conscience” or “interferes
6 with the rights implicit in the concept of ordered liberty.” *Corales*, 567 F.3d at 568.

7 Currently, this issue seems to come down to a factual dispute about whether the boat meets
8 the definition of marine debris. There is not enough information before me, at this early stage, to
9 assess the veracity of either side’s argument. It is possibly plausible that the boat is not marine
10 debris, the agency is intentionally acting outside its authority to seize it, and Knight has a viable
11 Fourteenth Amendment Claim. Therefore, at this point, there are serious questions going to the
12 merits of this claim. *See Doe*, 19 F.4th at 1177.

13 **ii. Fourth Amendment Seizure**

14 In *Soldal v. Cook County, Illinois*, 506 U.S. 56, 67 (1992), the Supreme Court explained
15 that the Fourth Amendment protects plaintiffs’ property rights in civil cases. As relevant here, the
16 Court also held that seizing the plaintiff’s mobile home and carrying it away to a new location
17 constituted a “seizure” within the meaning and protections of the Fourth Amendment, even if no
18 invasion of privacy had occurred. *Id.* at 61-64; *see also id.* at 66 (“[A] seizure of [an] article . . .
19 would obviously invade the owner’s possessory interest.” (quoting *Horton v. California*, 496 U.S.
20 128, 134 (1990))). The Court explained that “the right against unreasonable seizures would be no
21 less transgressed if the seizure of the house was undertaken to collect evidence, verify compliance
22 with a housing regulation, effect an eviction by the police, or on a whim, for no reason at all.” *Id.*
23 at 69.

24 Knight asserts that he lives in his boat, though the RBRA contests that fact. If his boat is
25 his home, towing away the boat would constitute a seizure under the Fourth Amendment. *See id.*
26 at 61-64. Whether that seizure is reasonable and therefore permissible under the Fourth
27 Amendment is up for the debate. The RBRA does not directly address the Fourth Amendment
28 argument but seems to assert the seizure would be reasonable given its authority under CHNC

1 sections 550 and 551.

2 The parties contest whether CHNC sections 550 and 511 authorizes seizure of Knight’s
3 boat, given their conflicting views whether the boat constitutes marine debris. But even if the
4 regulation authorized seizure, the seizure is not necessarily reasonable within the meaning of the
5 Fourth Amendment. Where a possessory interest is protected by the Fourth Amendment, “[t]he
6 mere fact that a state has authorized a search or seizure does not render it reasonable under the
7 Fourth Amendment.” *Sandoval v. County of Sonoma*, 72 F. Supp. 3d 997, 1007 (N.D. Cal.
8 2014), *aff’d*, 912 F.3d 509 (9th Cir. 2018), *and aff’d*, 912 F.3d 509 (9th Cir. 2018) (first citing
9 *Sibron v. New York*, 392 U.S. 40, 61 (1968); then citing *Miranda v. City of Cornelius*, 429 F.3d
10 858, 864 (9th Cir. 2005)); *cf. Conner v. City of Santa Ana*, 897 F.2d 1487, 1493 (9th Cir. 1990)
11 (rejecting a constitutional challenge to the city’s authority to seizure automobiles as meritless
12 where the court determined the ordinance “was authorized by state law and was within the police
13 powers of the state”).

14 The RBRA does not explain why the seizure would be reasonable under the CHNC and
15 fails to otherwise address reasonableness in its opposition. It also does not contest that it did not
16 offer Knight a hearing on the seizure, *see* Compl. ¶ 83; Mot. ¶ 12, or provide Knight a copy of the
17 survey that determined his boat was marine debris, Mot. ¶ 19. At this point, then, there are serious
18 questions going to the merits of the reasonableness of the seizure. *See Doe*, 19 F.4th at 1177.

19 **iii. Fifth Amendment Takings Clause**

20 “A property owner has an actionable Fifth Amendment takings claim when the
21 government takes his property without paying for it.” *Knick v. Township of Scott, Pa.*, 139 S. Ct.
22 2162, 2167 (2019). “The government commits a physical taking when . . . the government
23 physically takes possession of property without acquiring title to it.” *Cedar Point Nursery v.*
24 *Hassid*, 141 S. Ct. 2063, 2071 (2021) (citing *United States v. Pewee Coal Co.*, 341 U.S. 114, 115-
25 17 (1951) (plurality)). This “sort[] of physical appropriation constitute[s] the ‘clearest sort of
26 taking,’ and we assess [it] using a simple, *per se* rule: The government must pay for what it
27 takes.” *Id.* (first quoting *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001), then citing *Tahoe-*
28 *Sierra Pres. Council, Inc. v. Tahoe Regional Plan. Agency*, 535 U.S. 302, 322 (2002)).

1 Additionally, “[i]ndividuals must receive notice and an opportunity to be heard before the
2 Government deprives them of property.” *Gremmels v. FDA*, No. 21-CV-06102-JSC, 2021 WL
3 7448539, at *2 (N.D. Cal. Oct. 5, 2021), *report and recommendation adopted*, No. 21-CV-06102-
4 VC, 2021 WL 7448546 (N.D. Cal. Nov. 4, 2021) (quoting *United States v. James Daniel Good*
5 *Real Prop.*, 510 U.S. 43, 48 (1993)).

6 The RBRA provided Knight the opportunity to exchange his boat for compensation
7 through the buy-back program, which would seemingly obviate a Takings Clause claim. But
8 Knight asserts that the compensation was conditioned on not becoming homeless after selling the
9 boat, and that if he became homeless he would be forced to return the money. Mot. ¶ 30. The
10 RBRA does not address this argument. It seems as though requiring Knight to forfeit the
11 compensation if he becomes homeless—which is certainly a possible outcome of a forced
12 eviction—could violate the requirement of the Takings Clause to provide just compensation for
13 seizure of property, because it would condition the compensation on avoiding a perhaps
14 unavoidable consequence of the government’s own action. Because the RBRA does not address
15 this potentially plausible argument, I find there are serious questions going to the merits of the
16 Fifth Amendment claim.

17 **iv. Remaining Claims**

18 To state a substantive due process claim based on the state-created danger doctrine, Knight
19 must establish: (1) “the officers’ affirmative actions created or exposed h[im] to actual,
20 particularized danger that [h]e would not otherwise have faced”; (2) “the injury was foreseeable”;
21 and (3) “the officers were deliberately indifferent to the known danger.” *Martinez v. City of*
22 *Clovis*, 943 F.3d 1260, 1271 (9th Cir. 2019). The third element, deliberate indifference, requires
23 “proof that a municipal actor disregarded a known or obvious consequence of his action” which is
24 “a stringent standard of fault.” *Id.* at 1274 (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974
25 (9th Cir. 2011)). “[I]t requires a ‘culpable mental state.’” *Id.* (quoting *Patel*, 648 F.3d at 974).

26 Even if Knight could meet the first two elements of the state-created danger claim, he does
27 not show, at least based on this preliminary posture, that Malcolm or any other responsible official
28 had a culpable mental state to expose Knight to the dangers of homelessness. *See id.* Malcolm’s

1 sworn declaration asserts that he has conducted day and night patrols of Richardson Bay since
2 October 2021 and has never seen anyone living on the boat. Malcolm Decl. ¶ 8. Whether Knight
3 actually lives on the boat is a separate question; that Malcolm believed no one lived on the boat
4 shows he did not have a culpable mental state intending to evict Knight from his home with
5 nowhere to go, or to expose him to the additional dangers of being unhoused and living with
6 disabilities.

7 Additionally, Knight does not currently provide sufficient supporting facts or law for his
8 claims concerning mail and wire fraud, extortion, conspiracy to commit hijacking, or violations of
9 the Administrative Procedures Act. This, combined with the lack of counterargument or rebuttal
10 from the defendants, means I cannot say at this preliminary stage whether there are serious
11 questions on the merits of these claims.

12 **B. Balance of Hardships**

13 A “plaintiff[] must establish that irreparable harm is *likely*, not just possible, in order to
14 obtain a preliminary injunction.” *Cottrell*, 632 F.3d at 1131 (citing *Winter*, 555 U.S. at 20-21).
15 “The Ninth Circuit has held that ‘an alleged constitutional infringement will often alone constitute
16 irreparable harm.’” *Santa Cruz Homeless Union v. Bernal*, 514 F. Supp. 3d 1136, 1145 (N.D. Cal.
17 2021), *modified*, No. 20-CV-09425-SVK, 2021 WL 1256888 (N.D. Cal. Apr. 1, 2021) (quoting
18 *Assoc. Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir.
19 1991)). The “public interest in preserving nature and avoiding irreparable environmental injury”
20 is “well-established.” *Cottrell*, 632 F.3d at 1138 (citation omitted).

21 First, Knight alleges many constitutional rights that were infringed. As explained above,
22 as least three of these allegations have substance. These alone may constitute irreparable harm.
23 *See Bernal*, 514 F. Supp. at 1145.

24 Additionally, Knight submitted a sworn declaration stating that he lives on his boat. Mot.
25 Ex. A. (“Knight Decl.”). He says he will be unable to find a new place to live because he has a
26 fixed income and little credit history. Mot. ¶ 4. Knight asserts that he will suffer irreparable harm
27 if he is evicted from his boat because if becomes homeless, he will not have access to hygiene
28 facilities like showers, which are especially necessary given his physical ailments from a recent

1 staph infection. Knight Decl. ¶¶ 6-8.

2 The RBRA contests that Knight lives on his boat but does not assert he has another place
3 to live or will be able to care for his physical ailments if he is evicted. The RBRA cites several
4 out-of-circuit cases about how seizure of property does not constitute irreparable harm. *See* Oppo.
5 6:15-7:2 (citing *Lambert v. Bd. Of Commissioners of Orleans Levee Dist.*, No. 05-5931, 2006 WL
6 8456316, at *6-7 (E.D. La. Mar. 22, 2006); *Joseph v. United States*, No. 2017-0011, 2017 WL
7 761637, at *3 (D. Vir. Is. Feb. 27, 2017); *Tiffany v. Forbes Custom Boats, Inc.*, 959 F.2d 232 (4th
8 Cir. 1992)). But this case is unlike those because Knight's argument is that the irreparable harm
9 stems from his use of his boat as housing, including his alleged unlikelihood of procuring new
10 housing at an affordable rate given his fixed income and limited rental history. Based on these
11 allegations, Knight may suffer irreparable harm to his health and safety if the eviction goes
12 through.

13 And importantly, the RBRA does not appear to assert any irreparable harm from delaying
14 the seizure of Knight's boat. While avoiding irreparable environmental injury is a harm that could
15 tip the balance of equities in favor of the RBRA, *see Cottrell*, 632 F.3d at 1138, the RBRA does
16 not actually assert that Knight's boat harms the environment. Rather, it argues it has the statutory
17 authority to remove the boat under environmental protection laws and it includes a copy of the
18 Eelgrass Protection and Management Plan. *See* Oppo. 7:11-21; Ex. G. Because it is not clear *at*
19 *this stage in litigation* that having Knight's boat on the water causes harm to RBRA or the public,
20 I cannot say that the agency or the public will suffer irreparable harm by continuing the status quo,
21 at least for a short period. The defendants do not make a sufficient showing at this point to tip the
22 balance of equities in their favor.

23 Therefore, based on the alleged constitutional violations and alleged harm to Knight's
24 health that the seizure and eviction may cause, compared to the apparently non-urgent need to
25 enforce environmental protection guidelines, I find on this record that the balance of equities
26 strongly favors Knight. Coupled with the serious questions going to the merits as outlined above,
27 the motion for the temporary restraining order shall issue.

28

CONCLUSION

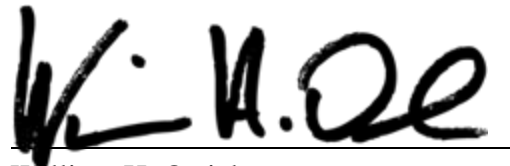
The motion for the temporary restraining order is GRANTED.⁵

As described above, the parties shall conduct expedited discovery and exchange initial disclosures of documents each side relies on to prove their claims and defenses, and a list of witnesses, by November 3, 2022. Knight shall file an expanded Motion for a Preliminary Injunction by November 23, 2022. The defendants shall file any opposition by December 12, 2022, and Knight may file any reply by December 19, 2022. The hearing will be held on January 4, 2023, at 2:00 p.m. via Zoom videoconference.

In the papers, the parties must address: whether the RBRA may exercise authority over vessels in Richardson Bay; whether the *Coronado* qualifies as marine debris; whether Knight lives on the boat; what form of compensation was offered and/or rejected and why; other questions raised by this order; and, any other pertinent information.

IT IS SO ORDERED.

Dated: October 27, 2022



William H. Orrick
United States District Judge

United States District Court
Northern District of California

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⁵ Knight’s motion for proceedings to occur via Zoom, Dkt. No. 5, is GRANTED.